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COMMITTEE MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
STRATEGIC POLICY DEVELOPMENT

JOE SERNA, JR., CAL/EPA BUILDING
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2ND FLOOR
COASTAL HEARING ROOM
SACRAMENTO, CALIFORNIA

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TIFFANY C. KRAFT, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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Mr. Gary Petersen

STAFF

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Ms. Kristen Garner, Executive Assistant

Mr. Jeff Hunts, Branch Manager, E-Waste Branch

Mr. Brian Larimore, Staff

Mr. Howard Levenson, Deputy Director, Permitting and
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Mr. George Mendoza, Supervisor, Audits

Mr. Bill Orr, Division Chief, Cleanup, Closure and
Financial Assurance Division

Mr. Ted Rauh, Program Director

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APPEARANCES CONTINUED

ALSO PRESENT

Ms. Grace Chan, L.A. County Sanitation District

Mr. Chuck Helget, Allied Waste

Ms. Yvonne Hunter, Institute for Local Government,
California Climate Action Network

Mr. Bill Magavern, Sierra Club

Mr. Mike Mohajer, L.A County Task Force

Mr. Scott Smithline, Californians Against Waste

Mr. Larry Sweetser, Rural Counties Environmental Services
Joint Powers Authority

Mr. David Tieu, OC Waste & Recycling

Mr. Chuck White, Waste Management

Ms. Michelle Young, City of San Jose

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 PROCEEDINGS

2 CHAIRPERSON BROWN: Good morning. Welcome to the
3 June 10th meeting of the Strategic Policy Development
4 Committee.

5 As you all probably already know, there are
6 agendas on the back table. If you intend to speak to any
7 of the items before us today, there are speakers slips in
8 the back of the room. Please fill one out and bring it to
9 Kristen. You'll have an opportunity to address the items
10 as they come forward.

11 As a reminder, turn off your cell phones or turn
12 them in the vibrate mode.

13 Kristen, would you call the roll?

14 EXECUTIVE ASSISTANT GARNER: Chesbro?

15 COMMITTEE MEMBER CHESBRO: Here.

16 EXECUTIVE ASSISTANT GARNER: Mulé?

17 COMMITTEE MEMBER MULÉ: Here.

18 EXECUTIVE ASSISTANT GARNER: Peace?

19 COMMITTEE MEMBER PEACE: Here.

20 EXECUTIVE ASSISTANT GARNER: Petersen?

21 COMMITTEE MEMBER PETERSEN: Here.

22 EXECUTIVE ASSISTANT GARNER: Brown?

23 CHAIRPERSON BROWN: Here.

24 Any ex partes to report?

25 COMMITTEE MEMBER MULÉ: Up to date, Madam Chair.

1 CHAIRPERSON BROWN: It appears everybody is up to
2 date.

3 So we will go first to any Program Director's
4 reports? So you don't have a report? No.

5 First agenda item is a Committee Item B,
6 Discussion and Request for Direction on Options to Reduce
7 Green Material Alternative Daily Cover, Board Item 10.
8 Howard.

9 PROGRAM DIRECTOR LEVENSON: Thank you, Madam
10 Chair. For the record, I'm Howard Levenson with the
11 Sustainability Program.

12 This item presents analyses that were prepared by
13 stakeholder working group along with staff's own analysis
14 of several options to reduce the use of green material
15 ADC. This was at the direction of the Board at your March
16 meeting. We're seeking your direction on which of these
17 options warrant further discussion and consideration.

18 Before we get into the nitty-gritty of the item,
19 I do want to commend the working group for its effort.
20 Many of them are in the audience and will provide some
21 additional perspective. Although they didn't come to
22 total consensus on some of the key issues, they worked
23 well together and worked very rapidly with Brian Larimore
24 of our staff. And their analyses are included in the
25 attachment.

1 We've provided our own perspectives on the
2 working group analyses and summarized the staff
3 perspectives in Table 1 of the agenda item. As Brian will
4 explain, there are three of these issues that staff think
5 are worthwhile to pursue, particularly the fee issue, the
6 diversion processing and capacity provision and the idea
7 of some sort of local purchasing requirement. But all
8 three of these would require statutory change. So we're
9 seeking your direction on whether to do more work on these
10 in some manner. For example, how the details of how these
11 might be implemented and if you would like us to do more
12 work on those kinds of options and pros and cons,
13 particularly on the process and capacity of the reuse and
14 purchasing provision requirements. There's less work
15 that's needed on the fee issue. That's the subject as you
16 all know of two bills in the Legislature. Of course
17 that's very controversial. There's less analysis that's
18 needed in those kinds of options.

19 The other options, one of them concerns the
20 development of more information and tools, which we're
21 already planning to do. And the last one concerns the
22 idea of some sort of phase out, which is probably the idea
23 of with the least amount of consensus which we also could
24 do more work on if you so desire.

25 That's a quick overview. I want to turn it over

1 to Brian Larimore to go through in more detail what we
2 heard from the working group and our own perspectives.

3 (Thereupon an overhead presentation was
4 presented as follows.)

5 MR. LARIMORE: Good morning, Chair Brown and
6 Board members. Before I get into the presentation, I want
7 to thank the members of the ADC Policy Working Group for
8 their great work. I know they're all very busy, and I
9 really appreciate the work they've done. They didn't have
10 to be prodded to express their opinions.

11 I'm going to start off with a little background
12 information and then go into ADC Policy Working Group
13 analyses and staff suggestions.

14 --o0o--

15 MR. LARIMORE: There are several drivers that led
16 to this discussion. You're familiar with Strategic
17 Directive 6.1, the biofuels forum, organic summit, and
18 organics policy roadmap. I'll update you on what's
19 transpired since the March 11th meeting of the Committee.
20 At that meeting, the Board directed staff to form a work
21 group to develop policy options for using green material
22 ADC.

23 The work group was designed so that several
24 sectors were represented including composting, local
25 government, the environment, and waste management. We

1 held three meetings in April to discuss five separate
2 policy options. Leads were chosen to coordinate analysis
3 of each of these options. The work group's complete
4 analyses are included as Attachment 1 of the item if you
5 want to take a look.

6 --o0o--

7 MR. LARIMORE: Staff is seeking a Board
8 discussion on which of the five options warrant further
9 discussion and consideration. If you look at Table 1 on
10 page 9 of the agenda item, you'll see a summary of the
11 questions and staff's suggestion that may help focus the
12 discussion today.

13 At this time, I would like to summarize the
14 options.

15 Option 1: Marketing, reuse, and purchasing.

16 The work group came to a consensus that a mandate
17 requiring local jurisdictions to reuse all green waste
18 generated locally was unfeasible due to the limited
19 tonnages controlled by government agencies, difficulties
20 in tracking material flow, and concerns over the quality
21 of material that could have to be taken back.

22 The work group addressed this by recommending
23 that local jurisdictions instead be required to develop
24 and implement compost marketing plans which would include
25 reuse and purchasing policies and local market development

1 efforts in order to assume responsibility for locally
2 generated green waste.

3 These compost marketing plans could be required
4 as part of the annual reporting process and include model
5 ordinances, purchase policies, contract provisions,
6 marketing plans, compost specifications, and other efforts
7 to support regional compost markets. Staff believes that
8 compost marketing plans with organics reuse and purchasing
9 requirements may be an effective tool in reducing green
10 material ADC. This would require statutory change.

Also the work group recommends creation of a toolbox to support municipal use of compost. The toolbox would provide information that would assist jurisdictions in determining existing markets and where to focus market development efforts. Staff believes development of a toolbox may be worthwhile.

17 --o0o--

18 MR. LARIMORE: Option two: Increasing the
19 disposal fee and/or surcharge. The work group identified
20 several options for disposal and tipping fees but did not
21 reach a consensus on how to address these. The work group
22 did exhibit a general consensus that additional funding is
23 needed to develop infrastructure and markets. Also the
24 work group believes funds collected from fees on green
25 material ADC use should be distributed in an equitable

1 manner and used within the region in which it is
2 generated.

3 Two main ideas were identified by the work group,
4 both requiring legislation. I hope these ideas best
5 address the work group's input.

6 First is applying the \$1.40 per ton charge to
7 green material ADC. And raising the disposal tipping fee
8 on all solid waste disposal is the second.

9 Staff believes both ideas may be worthwhile.
10 Applying the \$1.40 per ton fee to green material ADC could
11 add revenues of \$3.6 million annually, although that could
12 change as material was diverted away. That would probably
13 drop down. And raising the fee by 60 cents per ton for
14 all solid waste would provide an additional \$25 million
15 annually to the IWMA.

16 A portion of additional revenues could be used as
17 a dedicated and stable funding source for grants and loans
18 to expand markets for organic materials, site new organic
19 materials management facilities, expand existing organic
20 materials management facilities, and improve environmental
21 controls to address air district and Water Board concerns.

22 --o0o--

23 MR. LARIMORE: Option three: Diversion
24 processing capacity. The work group agreed that the Board
25 should consider requiring local jurisdictions to develop a

1 diversion capacity element that would address its overall
2 diversion capacity for through its programs and
3 facilities. Staff suggests that would be worthwhile.

4 As you know, current regulations require counties
5 and regional agencies to include in the siting element of
6 the Integrated Waste Management plan a provision for 15
7 years of permitted disposal capacity for all jurisdictions
8 within the county or regional agency. If the county or
9 region cannot show 15 years of disposal capacity, it must
10 show plans of obtaining the capacity or to transform or
11 divert its waste. So this would move jurisdictions into
12 even more of a focus on the diversion side of things
13 rather than disposal.

14 Local jurisdictions would need assistance on
15 implementing the diversion processing capacity
16 requirement, which could include development of guidance
17 documents and training. While this idea would require
18 considerably more analysis regarding the details of
19 implementation, staff suggests that it would be a valuable
20 tool in promoting the siting of organics diversion
21 facilities. Requiring local jurisdictions to include
22 diversion processing capacity in their CIWMP documents
23 would require new statutory authority.

24 --o0o--

25 MR. LARIMORE: Option four: Local contract

1 mechanisms. The promotion of local contract mechanisms is
2 supported by the work group. Members recommend that
3 municipalities which contract for collection and
4 processing operations be encouraged to implement contract
5 provisions that support non-landfill uses of collected
6 green materials and that municipalities only implement new
7 contract provisions as contracts are re-negotiated with
8 existing or new haulers.

9 Staff suggested this idea would be worthwhile.
10 Provisions such as the percent of green waste a
11 jurisdiction should divert from a landfill could be
12 addressed through recommendations in case studies in the
13 toolbox rather than a mandate which would require new
14 statutory authority. Contract provisions could include
15 minimum diversion requirements for green materials based
16 on a list of approved products determined by
17 jurisdictions. Diversion requirements could be set at a
18 specific percent of total green material collected. In
19 addition, contract provisions could include minimum
20 composting requirements, reuse provisions to return
21 finished materials to jurisdiction, could disallow or
22 limit use of green material or ADC as beneficial reuse,
23 and require compost meet the United States Composting
24 Council's seal of testing assurance standards.

25 Staff suggests if the toolbox discussed earlier

1 under Option 1 is developed that it include a component on
2 local contract mechanisms to assist local governments in
3 implementing contract provisions that support diversion of
4 green materials from disposal at landfills.

5 --o0o--

6 MR. LARIMORE: Option five, last but not least,
7 phase out diversion credit. Elimination of diversion
8 credit for green material ADC is not uniformly supported
9 by the work group. Some work group members suggest that
10 material not suitable for composting, such as C&D, remain
11 eligible for diversion credit as ADC. However, others are
12 concerned this would undercut the incentive for operators
13 to generate clean loads.

14 There appeared to be a consensus among the work
15 group that if diversion credit for green material ADC was
16 to be eliminated, then it would be preferable to do this
17 all at once rather than through a phased approach.
18 Although there was disagreement over the time to implement
19 elimination of diversion credit, it was the general
20 consensus of the workload that seven years would be best
21 as it would provide sufficient incentive for local
22 government action and provide an adequate period of time
23 to arrange for alternative management options for green
24 material.

25 Most of the work group agreed that in order for

1 this policy to be most effective that it be implemented
2 along with some of the other policy options addressed by
3 the work group so that adequate diversion capacity and
4 market demands can be created by the end of the seven-year
5 period.

6 The work group determined that if elimination of
7 diversion credit is implemented, it would be critical to
8 require local government to develop and submit a plan to
9 the CIWMB which accounts for any impacts to divert
10 associated with adoption of this option. In this case,
11 the work group would recommend that the Board create model
12 local government plans and make them available to local
13 government and that local government plans be submitted as
14 part of an annual report.

15 --o0o--

16 MR. LARIMORE: In the event local jurisdictions
17 were making good faith efforts to establish and expand
18 organics diversion programs, compliance orders, penalties
19 wouldn't necessarily be required.

20 There are several issues that need to be
21 considered in a discussion of eliminating the diversion
22 credit. The statewide diversion rate can drop from 54
23 percent to 51 percent. Removing diversion credit would
24 require a statutory change, and site-specific issues would
25 need to be considered. If the Board directs staff to move

1 forward on this option, additional analysis would be
2 required.

3 This concludes my presentation. Thank you.

4 CHAIRPERSON BROWN: I think I heard something
5 uttered from Gary something like, whew.

6 COMMITTEE MEMBER PETERSEN: You did.

7 CHAIRPERSON BROWN: We have a few speakers.
8 I don't know. Does anybody have questions for staff
9 before we -- we'll launch straight into our speakers and
10 then ask questions from there. The first is Grace Chan,
11 L.A. County San.

12 MS. CHAN: Good morning, Madam Chair and Board
13 members. I just have brief remarks today.

14 I do want to say I appreciate working with the
15 staff on this group and also my fellow Committee members.
16 I think they did accurately present the outcome of the
17 group's discussions. And as Brian said, we didn't reach
18 consensus on everything, and this won't be a surprise for
19 you. But I feel compelled to say for the record that the
20 sanitation district does oppose removal of credit for
21 phase out for green waste used as ADC and imposition of a
22 fee as green waste used as ADC.

23 But that out of the way, there was a lot of
24 consensus on providing more support to local government,
25 more education, more market development, more tools to

1 broaden their options for organics management. And I
2 think we all felt like that was very important.

3 It was an interesting experience for me. I think
4 one of the other things that was clear was that regional
5 considerations and jurisdiction-specific evaluation is
6 also very critical and important as we go forward.

7 And that concludes my remarks. I thank you very
8 much. I would be happy to answer questions if anybody has
9 any.

10 COMMITTEE MEMBER CHESBRO: You may recall last
11 time we had this discussion I asked you questions about
12 the future of the use of green waste as ADC at Puente
13 Hills. I should rephrase the. Material that's now being
14 used and what its future would be.

15 And I just have to say I think to the -- and I
16 can't speak for future boards. But my perspective is that
17 to the extent we don't address this in a broad policy
18 sense, there's going to need to be a focus on the
19 jurisdictions who are now depending on ADC at Puente Hills
20 and how they're going to adjust to find other diversion
21 homes for the material that's currently being used for
22 that purpose.

23 So besides being sort of a philosophical priority
24 question, it's also a practical on-the-ground question
25 that I think the Board will need to engage with local

1 jurisdictions in the future as that transition takes
2 place.

3 MS. CHAN: And we do recognize that and
4 appreciate that. And as we plan for the closure of the
5 landfill, that's certainly one of the priorities in our
6 minds for all of the material recovery capacity that we
7 provide at the landfill to work with the jurisdictions,
8 work with the hauling industry, work with the recyclers.
9 Because in the end, when the doors close at Puente Hills,
10 that green waste won't show up at the doors of Puente
11 Hills. And it won't be our green waste to manage. It
12 really will fall back to the local jurisdictions and their
13 haulers. And we'd like to help facilitate that process so
14 it isn't such a burden on them.

15 COMMITTEE MEMBER CHESBRO: Madam Chair, one of
16 the questions the Board should ask is what roll should the
17 Board have in interacting with the jurisdiction with the
18 transition and how the diversion is going to be met that
19 currently is being counted as ADC.

20 COMMITTEE MEMBER PETERSEN: Excuse me, Madam
21 Chair.

22 Grace, hi. Couple of things. One, in the plan
23 for the phase out of the closure for Puente, have you
24 guys -- I know you've got probably some plans in how
25 you're going to be handling the green waste that comes in

1 after closure. What is it you're going to do, do you
2 know?

3 MS. CHAN: Well, there really will not be --
4 after closure, there will not be waste coming to the site.
5 What we do is every year we do haul off a certain amount
6 of green waste to other uses, other markets now. And part
7 of the reason we do that is because we do want to be aware
8 and educate ourselves about where the markets are. We
9 issue a Request for Proposal every fall for a certain
10 amount of hauling off the green waste to other markets.
11 It doesn't necessarily make financial sense for us to do
12 that because it's much further away and more expensive.
13 But we do that to keep involved in the marketplace and
14 will continue to do that. And those are the folks that we
15 want to continue to work with as we continue to get close
16 to closure.

17 COMMITTEE MEMBER PETERSEN: Because your area,
18 the area of L.A., is the tough market because of the
19 transportation costs and the sprawling cities and you have
20 to haul this stuff to Egypt to get rid of it.

21 Do you think the county san districts would
22 support let's say we've got diversion credit for ADC,
23 right. Let's say we go anaerobic digestion. Maybe
24 there's room in Puente. We put up an anaerobic digestion
25 system, or CT. Would you guys support the diversion

1 credit if it went over to that side?

2 MS. CHAN: The sanitation district always
3 supported diversion credit for conversion technology?

4 COMMITTEE MEMBER PETERSEN: And anaerobic?

5 MS. CHAN: Yes.

6 COMMITTEE MEMBER PETERSEN: Any thoughts in the
7 district about an anaerobic digester at all?

8 MS. CHAN: In terms of developing a facility at
9 Puente Hills, no. We haven't talked about doing anything
10 specifically at Puente Hills. We are involved in
11 conversion technologies on our bio solid side so we're
12 trying to -- and participating in with the county on their
13 process and the city's process.

14 There are still significant hurdles, credit being
15 one of them, along with land use issues. I mean, the
16 things that have been talked about all along. But we're
17 very interested in innovative technologies and energy
18 recovery.

19 COMMITTEE MEMBER CHESBRO: One last thought on
20 this particular geographic, the situation in southern
21 California. Another option -- this is jumping forward and
22 I don't want to debate this now. But another option for
23 us to discuss as we get to that point just occurred to me
24 is for us to -- the Board to engage in a monitoring and
25 assistance program that's targeted on those jurisdictions

1 that are dependent on Puente Hills ADC to help them -- to
2 notify them of their responsibility for diversion and to
3 offer to work with them and through our assistance
4 programs try to be a partner with the local jurisdictions
5 in figuring out what the alternative to ADC at Puente
6 Hills is going to be for each of the jurisdictions. It
7 won't be the same for everybody.

8 CHAIRPERSON BROWN: Good suggestion. Thank you,
9 Grace.

10 Our next speaker is Chuck White.

11 MR. WHITE: Thank you, Madam Chair and Board
12 members. Chuck White with Waste Management.

13 I want to echo what a great job staff has done,
14 Howard and Brian and our task force as Grace mentioned.
15 They did wonderful job of pulling us all together,
16 although there was certainly no consensus on many issues.
17 Although there was quite a bit of consensus on some.

18 Waste Management is certainly not opposed to
19 diversion of green materials from landfills as ADC. The
20 question is going to be how are we going to do this. It
21 boils down to in our view either a push or a pull. Do we
22 push out materials from landfills by bans, fees, or
23 restrictions, or do we pull it out by developing markets
24 for alternative use of these materials or perhaps some
25 flexible combination of the two. But the devil is going

1 to be in the details about how they do this in a balanced
2 and reasonable way.

3 The big question we have is where will these
4 materials go if they're banned or restricted and there's
5 no facilities or maybe more importantly no markets for
6 this material. I've used the example of our Redwood
7 Landfill in Marin County, which is we think the epicenter
8 of diversion for green materials. And we have a
9 seven-acre facility. We spent a million dollars to
10 protect water quality to put in water treatment systems.
11 It's not a covered facility. It has open windrow. It has
12 the capability of producing maybe 2500 tons per month.
13 Currently producing about 1500 tons per month.

14 Our costs there are eight dollars a yard on the
15 market if we were to sell it. We can't sell it for more
16 than five dollars a yard. We lose three dollars per yard
17 on everything we've sell.

18 We've hired Matt Cotton to help us, advise us can
19 we make the system more efficient. We're probably going
20 to hire Matt to help us evaluate a way to market it and
21 get more money for it. But the point is we're losing
22 three dollars per yard. It has to be subsidized by other
23 aspects of the landfill, those costs, which we're doing.
24 But how far can we do this if we expand it to all ADC in
25 California, particularly in southern California for which

1 a capability just doesn't exist.

2 So with respect to the various options, we
3 certainly support those options that have been considered
4 that are pulling the material out. Most notably, Option 1
5 and 3, the marketing plans, the diversion processing
6 capacity. We think these are all necessary to add to
7 facilities and make sure we can develop markets.

8 The fourth one with respect to contracts makes us
9 a little bit nervous, because you certainly can require a
10 contract for solid waste service providers to divert
11 material. But the question is where do you divert it to
12 if there's no markets and limited facilities to take it
13 to. And again you would have to basically if there is
14 limited markets or facilities, you have to subsidize those
15 diversions through other waste practices, which is
16 certainly possible to do it. It just creates a problem.

17 The fourth option two on fees, we would prefer if
18 there was a general increase in overall disposal fees and
19 a significant portion of that be diverted towards market
20 development activities and see if we can develop more
21 facilities. That is if we raise the fee from 1.40 to two
22 dollars that's being discussed in the Legislature. A
23 substantial portion of that would go to stimulate market
24 development. We're less in favor of the idea of putting a
25 fee on ADC until there's some vibrant market that these

1 materials are used for ADC and provide a good home for
2 them.

3 And the last option, Option 5, phasing things out
4 in seven years, I think seven years is probably a
5 reasonable target to talk about. But what happens at the
6 end of the seven years if there still aren't markets and
7 facilities. We hope if there is some further exploration
8 of this seven-year policy that there be some kind of
9 flexible understanding and you measure your progress in
10 developing marketing and facilities during the course of
11 the seven-year period. If it looks like you're having
12 problems developing markets or developing facilities in
13 various parts of the state to provide for this diversion
14 that that be re-visited and not be a hard and fast number
15 that everything comes to an end at the end of seven years.

16 Thank you very much for allowing me to speak
17 today. And I look forward to further conversations and
18 further working with you on this matter. Thanks.

19 CHAIRPERSON BROWN: Thank you, Chuck.

20 I think I neglected to thank all the members of
21 the Committee that worked so hard on this. We do
22 appreciate your work. And I think we're hearing from most
23 of you.

24 Next is Chuck Helget.

25 MR. HELGET: Madam Chair, members of the

1 Committee, Chuck II, testifying on behalf of Allied Waste.

2 The last time I testified before this Committee
3 on this topic, I very passionately urged you to avoid
4 slogans and rhetoric and focus on the science. As a
5 result of that testimony, I got appointed to this working
6 group. I actually didn't enjoy the initial part of the
7 time and extra energy and effort that everybody put into
8 this. But I can honestly say at the end of the day, I
9 made some new friends, lost some old friends. And it was
10 a good experience for everyone, generally speaking.

11 It was a really good process. Everybody came to
12 the process serving with a preconceived notion. But
13 everybody laid them out on the table and we talked. I
14 think it was a worthwhile exercise. As a result, you do
15 have I think some very viable options that have been laid
16 out for you.

17 Generally speaking, I would support what staff
18 has laid out. I think I'll deal with the fee issue first.
19 I think it's no surprise Allied has not been an advocate
20 of a specific fee on ADC. But on the other hand, we do
21 support additional revenue and additional funding for
22 composting facilities. There's no question that we have a
23 plight of a lack of composting operations in the state.

24 But I don't believe that a specified fee on ADC
25 will significantly or even in any imaginable way encourage

1 the siting of new facilities. It's a feel good solution.
2 If we're going to do a fee, let's do a fee that's going to
3 generate enough revenue to have some impact, I guess would
4 be my urging.

5 Secondly, there are I still believe firmly that
6 as a result of our discussion there are probably four
7 issues that really need to be dealt with and getting
8 through and encouraging not just additional capacity but
9 new facilities. I don't think expanding existing capacity
10 is not going to solve our problems. We're going to have
11 new facilities. It's a different problem.

12 You've got public perception. I've done some
13 work for a composting site here in Sacramento, and
14 absolutely I would argue the first and foremost problem is
15 the perception that you have with the composting
16 operation. It sinks. It's a bad operation. And
17 particularly when you throw food waste into the mix.

18 The second part of the problems that you're
19 trying to deal with is as we're trying to grow these
20 facilities, we have Air Boards, local Air Board
21 requirements pressing us down. We have Water Board
22 restrictions pressing us down. And it's making it
23 extremely difficult. Those two areas alone if we did
24 something significant to modify their impact, we would
25 have accomplished something.

1 And finally, regional implications of any
2 solution that we have on composting. The markets and the
3 composting facilities and the infrastructure in the bay
4 area is very different than what you find in rural
5 counties and what you find in San Diego. So you need to
6 make sure that you're aware of that as you go through the
7 process.

8 So I will quit preaching. Again thank you for
9 appointing me to the working group. It was a wonderful
10 experience.

11 CHAIRPERSON BROWN: I don't even have a come-back
12 for that. Thank you for your humorous input as to how
13 enjoyable it was.

14 Yvonne Hunter.

15 MS. HUNTER: Good morning, Madam Chair and Board
16 members. Yvonne Hunter with the Institute for Local
17 Government and now wearing the hat of program director for
18 the California Climate Action Network.

19 I won't be humorous unlike Chuck. But his
20 comment about regulatory requirements for siting compost
21 facilities brought to mind -- and I don't know how many of
22 you were on the Board. It was about, what, three to five
23 years ago when the South Coast Air Quality Management
24 District as a way of meeting some of -- I think it was
25 PM10 requirements wanted composting facilities to be

1 covered. And it was the classic example of two State
2 agencies having very valid regulatory goals but being in
3 conflict. And we worked very closely with Board members
4 and I think resolved the issues. So that is a trip down
5 memory lane.

6 I'm here not to argue or advocate one way or the
7 other on ADC, but simply to remind the Board, refresh your
8 memory about the project that the Board has is moving
9 forward with the Institute for our climate change program.
10 The contract was signed and delivered and it should be in
11 your offices.

12 While it is going to focus on commercial
13 recycling, that was the decision and very appropriate
14 decision on how to get local governments to expand
15 commercial recycling. There is part of the contract where
16 we will be working to expand our best practices framework,
17 the latest version, version 5.0, just been released. And
18 we want to expand the content somewhat in that.

19 And I just want to read if I may one of the
20 sections on the best practices framework for waste
21 reduction and recycling, because this will give you a
22 sense of the kind of activities that we are suggesting
23 cities and counties consider as they're evaluating how to
24 reduce the greenhouse gas emission. And this was done
25 with input from our staff, the waste industry and

1 environmental community.

2 And I need to stay that some people wanted us to
3 take a firm position in support of ADC. A couple of
4 others wanted us to take a firm position against ADC. And
5 we very clearly said we're not touching this subject.
6 This is not an -- alternative daily cover specifically is
7 not mentioned in this document.

8 But one of the sessions in the best practices
9 framework the goal is implement source reduction,
10 recycling, and resource recovery programs for waste
11 organic materials, produce compost, mulch, energy, and
12 fuels from organic waste streams. And then it lists a
13 number of things that individual cities and counties can
14 consider. And if the time -- let me just read them real
15 quickly.

16 Agency facilities to identify opportunities to
17 increase material recovery and beneficial use of organic
18 material. Establish an organic material recovery program
19 for green waste from agency parks and facility
20 landscaping. Establish a program to use the maximum
21 amount as possible of organic waste generated within the
22 jurisdiction to produce compost and/or biofuel including
23 use on agency parks and landscaping. Establish incentives
24 for residents to participate in green waste recycling
25 programs. Adopt a restaurant food collection program or

1 ordinance. Approve siting of composting facility within
2 jurisdiction.

3 So this is a broad, broad spectrum of ideas. And
4 we look forward to working with the Board to perhaps
5 expand that, drill down for other resources. We look
6 forward to working with the waste industry, Californians
7 Against Waste, and of course our main partner, cities and
8 counties to find out what they done. And as we get that,
9 we will be expanding this document. And once again, thank
10 you for agreeing to collaborate with us on this project.
11 We're very excited. Thank you.

12 CHAIRPERSON BROWN: We should be thanking you.
13 Thank you, Yvonne, very much.

14 Next, Scott Smithline.

15 MR. SMITHLINE: Good morning, I'm Scott Smithline
16 with the environmental group Californians Against Waste.

17 If I'm being completely frank, when you first
18 recommended that we go to this work group, Chair Brown, I
19 probably had a thought that was less than completely
20 supportive. And, however, I do think it was a useful
21 exercise for a couple reasons. I think it was useful for
22 the participants who have been advocating on this issue to
23 come together and have many frank conversation. I agree
24 that not much was left. I mean, everything got put out on
25 the table.

1 I don't know whether I'm one of Chuck's new
2 friends or old friends. But probably won't find out until
3 after the end of the legislative session.

4 I do have a couple comments I want to make and
5 they're broad, not too many.

6 At every work group that you've had on organics,
7 I think ADC has come up as a primary barrier in some form
8 or another. And I think you've taken appropriate steps to
9 begin to address this issue. And I really feel like this
10 is the opportunity. So everybody has expended a lot of
11 energy in this process, the staff, the stakeholders. And
12 now I think the onus is upon this Board to receive that
13 information and decide to take some bold action in this
14 issue area.

15 I think the two areas where the most meaningful
16 action can be taken are with respect to the elimination of
17 diversion credit or a fee. I think the other options are
18 important. I think they would be part of a meaningful
19 package to deal with green material ADC. But I think in
20 and of themselves if that's all we did we really would
21 have missed an opportunity to tackle this problem.

22 With respect to the fee, I'd like to say I think
23 the most useful fee would be a fee specifically on ADC. I
24 think that's a little bit of a false argument to say that
25 because that fee would not in and of itself change market

1 forces that therefore it would not be a useful fee. It
2 would have a marginal impact on the economy. And I think
3 that's valuable and also create a pot of money we could
4 use to help support which is also useful. So just because
5 in and of itself that's not going to change the direction
6 of a truck going down the street from a landfill to a
7 compost operation, it will factor into the equation. And
8 I think that's important.

9 And ultimately I think that the key issue is
10 elimination of diversion credit. I think until we decide
11 as a state that recycling does not include putting green
12 materials back into the face of a landfill that we're
13 going to continue to battle this problem.

14 And I don't agree that we have the same market
15 problem that keeps being brought up. I understand Waste
16 Management has issues and Allied and other companies have
17 issues in specific regions. But generally the composters
18 who are making quality products sell all of their product.
19 They can't get enough material. So I understand we have
20 regional issues, but I think we need to address those
21 regional issues.

22 And I support development of market mechanisms.
23 And I agree it needs to be both a push and a pull frankly.
24 But the ADC itself, let's not kid ourselves. It is part
25 of the barrier to expanding markets, because there are

1 instances where we can't get the material into the market
2 because it's going to ADC.

3 So again I promise to be brief. I think the most
4 valuable thing coming out of the work group is you have
5 the information before you now. I don't think there's any
6 more research that needs to be done. I think it's time
7 for analysis and decision making. It's time for action,
8 and we hope it's a bold one. Thank you.

9 CHAIRPERSON BROWN: Thank you, Scott.

10 Our next speaker is Larry Sweetser.

11 MR. SWEETSER: Good morning, Board members.

12 Larry Sweetser on behalf of the Rural Counties
13 Environmental Services Joint Powers Authority.

14 Based upon what I heard, I'm not sure in I regret
15 joining the group or not. I was in the audience and I
16 almost got up to testify and get volunteered, but I
17 thought enough had been said at the time.

18 Overall, composting is not the easiest thing to
19 implement in the rural areas, but I have been impressed
20 with some of our efforts.

21 One challenge we face is green waste and green
22 material in rural is not quite the same as urban areas.
23 We have far less grass, a lot more brush and wood waste
24 coming in. We have Matt Cotton scratching his head. As
25 much as I love him, we haven't figured out a way to

1 compost pine needles which is a biggy. That's been a
2 detriment there.

3 On this issue, Inyo County doesn't have any
4 composting operations, but they do grind up a lot of the
5 green material, particularly the woody material and gives
6 it away free. And some of that material does get used for
7 ADC. Butte County, Calaveras, they have some composting
8 operations, but they still use ADC. Butte County charges
9 a reduced fee for any green materials coming in.
10 Calaveras charges no fees. They're funded entirely on a
11 parcel tax, which makes it very difficult to implement any
12 additional fees.

13 We do wholly support the Board providing tools
14 such as siting and marketing issues. And that's been a
15 very big problem in our rural areas to get facilities up
16 and running. We're definitely not thrilled at having to
17 have More mandates on plans or capacity requirements or
18 other reports, particularly regarding the Options 1 and 3
19 regarding the new requirements. We'd much rather see just
20 a request from the Board for us to give an update of what
21 we're doing with green material and composting as part of
22 our annual report. That's something quick and easy that
23 can be done without having to go through statutory
24 requirements or changes. I think most jurisdictions would
25 be willing to just put a paragraph or so on what they're

1 doing in their annual report. And the Board can ask that
2 very easily without mandates.

3 Regarding the tip fee, along with a lot of other
4 local governments, the rural counties have opposed the
5 legislation on that. Mostly concerned of a precedent for
6 other materials that are used in the landfill.

7 The fee detriment is really not that big an issue
8 in a lot of the rural areas. It is a big issue, but they
9 don't charge for it as for material coming in. So raising
10 any sort of fee would be difficult.

11 We do also have concern about the diversion
12 credit issue. It's not that big an issue in our rural
13 areas. Some of them get it and some of their substantial
14 portion of the diversion is from ADC. But in fact the
15 credit goes away. That won't necessarily by itself
16 promote more composting operations.

17 And that's pretty much it. So thank you very
18 much.

19 CHAIRPERSON BROWN: Thank you, Larry. I'm not
20 sure whether it's good or bad that you were on there, too,
21 sounds like.

22 Our last speaker is Mike Mohajer.

23 MR. MOHAJER: Good morning, Madam Chair and
24 members of the Board. My name is Mike Mohajer
25 representing the L.A County Task Force.

1 I'm going to be very brief on the basis that we
2 have yet to discuss this particular report at a Task Force
3 meeting which is scheduled for June 19th.

4 However, on the basis of what the Task Force has
5 decided in the past, the three issues that I'd like to
6 mention.

7 First, the Task Force has voted to oppose taking
8 away diversion credit for the ADC. And even though the
9 commenter referred to ADC and diversion credit is a
10 barrier to composting, but looking at your own staff
11 report from December 11th, Item 15 very specifically calls
12 out saying that 25 percent of compostable -- this is
13 emphasizing compostable organics that is being disposed is
14 made up -- can be used for composting. And that's
15 approximately ten million tons. When you look at ten
16 million tons versus 2.6 million tons, I can see why ADC
17 can be considered as a barrier unless the Board is
18 specifically looking at using source separated green waste
19 for the purpose of composting. So that's the reason for
20 opposing the diversion.

21 Secondly, we oppose imposing \$1.40 for green
22 waste and for the purpose of solely to promote one
23 product, i.e., composting. And that's why you're opposing
24 that.

25 And thirdly, on a personal standpoint, I pretty

1 much agree with the statement that Grace made, Chuck
2 White, and Allied overall, but we will be submitting a
3 written comment at a later date after the Task Force
4 meeting on the 19th. Thank you.

5 CHAIRPERSON BROWN: Thank you, Mike.

6 Amazing. We have one more speaker. Clearly
7 wanted to be the last speaker and the last word. You put
8 your speaker slip in when I said we had the last speaker.
9 But you know what. You're being one-upped. Matt and one
10 more after you. Go ahead, Matt.

11 MR. COTTON: Good afternoon, Madam Chair and
12 members of the Board. The aforementioned Matt Cotton,
13 independent consultant here in California.

14 I guess I come from the school where you hear
15 your name called a number of times, I would rather speak
16 for myself. My intent was not to be the last speaker to
17 get the last word.

18 But I want to take the opportunity to thank the
19 Board. I thought it was a bold move to put us together in
20 the group. It was a lot of fun. I really enjoyed it. I
21 wish we had more time.

22 CHAIRPERSON BROWN: Some people find roller
23 coasters fun and some don't

24 MR. COTTON: I enjoyed the frank discussion. I
25 enjoy raising my voice to Chuck and Chuck every now and

1 then and having it pointed back as well. But it was a
2 valuable group because we did put some of the bags aside
3 and did get to common ground. There's more on the table
4 that we could pursue. I think staff captured a lot of it.
5 It was a short time and there are a lot of agendas. We
6 all came with a lot and it's hard to not have that.

7 But I want to thank Board for the opportunity to
8 participate. And I want to thank staff's effort. Brian
9 did an excellent job. Elliot and Howard participated in
10 the group at various times, and it was productive.

11 I do want to comment on a few broad issues and
12 provide perhaps a little bit of clarity. I heard a few
13 things this morning which I don't agree with. And I'm
14 speaking as an individual, not part of the group. But I
15 keep hearing in the staff's presentation it talks about
16 phasing ADC likely resulting in a reduction in diversion
17 credit. That is a huge red haring. That is not going to
18 happen.

19 Grace Chan this morning, my colleague, just
20 because Puente Hills closes doesn't mean that green waste
21 that's being used as ADC is going to landfill disposal.
22 That's not going to happen. Most of the haulers, it will
23 be on the burden of the haulers to find a use for that.
24 But most likely they're not going to be cheap. Sorry,
25 Puente Hill is closed. That's not going to happen. I

1 really don't think that's going to happen.

2 Other options are there. L.A. San, one of the
3 most exciting things to come out of this is to find out
4 L.A. San has other options for their ADC. They look at
5 them every year. They're going to cost more. What a
6 surprise. So functionally what's happening is ADC or
7 landfills are subsidizing the use of ADC. That sounds
8 like a conundrum. But if they're not there, we'll find
9 better, more productive, and potentially costly options
10 for our green waste, just like any other recyclable
11 commodity, which we're landfilling. And I think in future
12 generations we'll be ridiculed for doing that. We need to
13 find uses for it. We're stifling ourselves by putting it
14 on the landfill. Yeah, the options are going to cost
15 more, but it's really, really cheap right now. So we need
16 to look at that.

17 As I said, to imagine a facility like Puente
18 Hills closing and all this green waste suddenly going
19 somewhere else, but there are other options for us. Not
20 necessarily have to drive to Ventura County where we have
21 acres and acres and acres of avocados, of lemons, and
22 citrus and a number of other crops that will benefit from
23 it. We have a drought situation going on. The best thing
24 we can do to mulch around our orchards, our blueberries.
25 They're growing blueberries in L.A. County. Who knew

1 this? Mike, are you aware of this? I had no idea.

2 Blueberries need the mulch and need the acidification from
3 the soil. Tremendous possibilities.

4 So the most important thing I want to say is that
5 I really do hope that the Board takes the information
6 staff has given, the impact from all the stakeholders, and
7 finds a bold solution for this. Because we're stifling
8 our ability to get to the exciting future we have in
9 organics.

10 Right now, if you're using ADC you're not
11 collecting residential food waste. You're not going to
12 collect food waste. You're not going to compose liquid
13 waste because you don't have a compost facility. How are
14 we going to get to the higher levels of organic diversion?
15 That's the part that got missed in this analysis. Your
16 green waste is going to ADC. You're not going to collect
17 your food waste. Not going to get to that a composting
18 facility. Those economics are pretty well known from the
19 European experience. If you've got green waste at eight
20 bucks a ton, that ain't going to happen. The price has to
21 come up. That's just a reality.

22 Ultimately I don't want to be here in ten years
23 saying I wish we put that green waste back on the fields.
24 Have you checked fertilizer prices lately? They are sort
25 of tied to fuel prices. And it is starting to have an

1 impact on the compost market. Composters are selling
2 compost as a replacement for fertilizer. And in addition
3 to fertilizer, compost makes that fertilizer work better.
4 We have to be on the forefront of that, advertising that,
5 advocating that, talking about that. And with this ADC
6 policy as currently written, we're not doing that. We are
7 behind where we need to be.

8 We need to solve this problem and get this
9 information out there, communicate this stuff and all the
10 tools. We talked about the local government purchasing,
11 et cetera. But we have a really exciting future for
12 organics diversion. We're not getting there as long as
13 the stick is in the wheel. That's what ADC is. Thank you
14 very much.

15 CHAIRPERSON BROWN: Thank you, Matt.

16 Michelle Young.

17 MS. YOUNG: Thank you, Madam Chair, members of
18 the Board, staff. I really hadn't meant to speak today
19 because I felt that I had a great opportunity to
20 participate in the process and to provide input in that
21 way. But in listening to the testimony, I did want to add
22 one more note from the municipal perspective.

23 I do represent the city of San Jose, but I also
24 work closely with the other cities in the Bay Area. So I
25 just want to give a little bit of perspective from the

1 municipal side of things. Maybe more of the northern
2 California municipal perspective.

3 San Jose was the first large city in the state to
4 meet the 50 percent diversion mandate. And we have done
5 this with a policy of no ADC use of our green material
6 with a marketing and research program that we've
7 implemented since the early 90s. And really with a
8 commitment to highest and best use.

9 It is more expensive. We just are putting in a
10 new position for organics coordinator for the city, and
11 there is a rate and fee implication for taking that road
12 and so cities that are committed can find these pathways.

13 So I have been committed through this process
14 which I found to be a very interesting and valuable to
15 help provide support for the development of the toolbox as
16 and other cities in the Bay Area have a lot of the tools
17 already established that we can use. We have contract
18 provisions. We have marketing plans, things like this.

19 I do also want to make mention of the many cities
20 in the Bay Area that are supporting the Assembly Bill
21 2640. So we do have a lot of support for a fee for this
22 material. And many of them are in support when the
23 diversion credit was still a part of the legislation. So
24 just keep that in mind when you look at the supporters
25 list or talk to some of the cities.

1 The other thing that has been valuable that we
2 have been working with in the last couple of years is we
3 have developed regional coordination teams throughout the
4 Bay Area and we have been meeting. We just had a meeting
5 last week on banning cardboard and green waste from
6 landfills. So we have a triumph in Oakland,
7 San Francisco, San Jose. We're bringing along the other
8 cities in the Bay Area sharing resources, looking at
9 regional facilities, thinking outside the box in terms of
10 conversion technology.

11 So I guess I just want to be -- didn't mean to be
12 the last voice here today. But a voice that
13 municipalities are working on this. We're getting ready
14 to implement our own fee on green waste material into the
15 landfill in San Jose. So I just want you to keep that in
16 mind that not all of the cities are feeling that this is
17 not something that they can do. So hopefully we'll be
18 able to provide input into the toolbox that gets created
19 and provide that support as we go forward.

20 Thank you very much.

21 CHAIRPERSON BROWN: Thank you.

22 COMMITTEE MEMBER PETERSEN: Excuse me. I have a
23 question. This is very interesting the way you guys have
24 put this all together.

25 But in looking at and talking to other

1 jurisdictions -- and they probably call you to get advise
2 on how to do this. The smaller jurisdiction cities that
3 have really tight budgets, how do you relate to them?
4 Have they asked you these questions? Do we get any
5 advice? And how do you feel about mandates on this?

6 MS. YOUNG: I guess it would depend on what they
7 were asking in terms of like a contractual provision.

8 COMMITTEE MEMBER PETERSEN: It's the cost. How
9 do you do this?

10 MS. YOUNG: There is a cost. Well, part of it is
11 that you generate policies in a community. So through the
12 local city council legislature we have developed a policy.
13 And then we actually have to promote that through the
14 community, because rates are paid on garbage collection as
15 well as tip fees.

16 COMMITTEE MEMBER PETERSEN: So some of these
17 smaller cities that don't want to raise rates because they
18 barely meeting their budget requirements now are stuck and
19 then the regionalization --

20 MS. YOUNG: Rates is one way to generate the
21 funds. It's not the only way.

22 COMMITTEE MEMBER PETERSEN: Do you see
23 regionalization of this where other jurisdictions can help
24 carry the water in other jurisdictions, that they would
25 have a contribution in some other way to do some of this?

1 MS. YOUNG: So, for example, in our case, we have
2 actually thousands of acres at our water pollution control
3 plant. So we're getting ready to create a regional
4 organics facility that would have some conversion
5 technology opportunities, potentially gasification,
6 definitely digestion, and a large indoor composting
7 facility. So the other cities in the area are very
8 interested in that, because they will be able to utilize
9 that facility without the up-front costs that we are
10 currently putting in.

11 COMMITTEE MEMBER PETERSEN: That's really good
12 thinking.

13 Now what do you think about the mandates as
14 prescribed in some of their options here?

15 MS. YOUNG: In the options here. Actually, well,
16 the city was very excited to have me participate on the
17 team. And again, we are implementing our own fees. So
18 we're very much in support of fees.

19 And we are also -- we have a policy of no green
20 waste for ADC. We have since the beginning of our
21 contracts in the late 80s actually. So we are in support
22 of the removal of the diversion credit. And we're very
23 much in support of city toolboxes. That would be
24 something that we would be able to offer. So I think
25 we're definitely on board with this.

1 COMMITTEE MEMBER PETERSEN: Thank you.

2 CHAIRPERSON BROWN: Thank you, Michelle.

3 COMMITTEE MEMBER CHESBRO: Are we ready to launch
4 into discussion here?

5 CHAIRPERSON BROWN: Launch away.

6 COMMITTEE MEMBER CHESBRO: Well, Madam Chair and
7 members, I made no secret since I've been back on the
8 Board one of the areas most surprising and disappointing
9 to me was what appeared in the 90s to be a robust
10 development of composting in this state had slowed down
11 and not achieved what I think the hopes were when I left
12 the Board in 1998.

13 And there's a lot of reasons for that, and I
14 don't think ADC is the only one. But it certainly is a
15 significant contributing factor. And we have a lot of
16 challenges to face to try to figure out how to move
17 forward with our strategic policy with regards to
18 organics. And so I think it's important to put in the
19 context this is one of the pieces.

20 Now, I had the privilege, although also there was
21 a little bit of chagrin involved, to be invited to
22 represent our progress in California and talk about it in
23 another country recently. Mostly because they look up to
24 California and feel that we've achieved a tremendous
25 amount. And they want to learn how we do it.

1 But I also didn't include in my initial remarks
2 but it came up in a question and answer session had to
3 talk about ADC. And I have to tell you, outside the
4 context of all the day-to-day practical problems that have
5 driven this issue, it's pretty hard with a straight face
6 to look at somebody and say we're solving our solid waste
7 problem by putting something back in the landfill and
8 calling it diversion, you know, when you're like stepping
9 back from the issue and not debating the difficulty of
10 solving the problem, which is what we're doing here today.
11 But I want to create that context.

12 And I think we continue -- and those communities
13 that depend on this continue to be at risk of what
14 happened in this Bay Area with the TV station exposing the
15 use of ADC. I think the public similar to the composters
16 and policy makers I talked to in Ireland when confronted
17 with just the simple question, is that diversion, it
18 doesn't meet the common sense test, you know. It just
19 doesn't add up. Especially in light of the fact that we
20 have goals to get organic materials out of landfills. So
21 that's sort of the broader recent experience context that
22 I put the conversation in.

23 Now, on the other hand, this is a practical
24 problem. And we have to as a Board that both regulates we
25 have to try to help figure out what the practical solution

1 to the problem is, not just be pie in the sky and say it's
2 a bad thing so let's jump to some other approach by making
3 an arbitrary decision.

4 I think it's been that conflict between what I
5 think most of the people would say ought to be versus the
6 practical. When we first allowed ADC I think clearly it
7 was viewed as something that would be transitional while
8 markets developed for other uses. Pressure release valve.
9 You know, good faith effort for local jurisdictions. And
10 unfortunately we, however, moved into this becoming a
11 permanent -- at least in the current circumstance a
12 permanent feature of how we manage waste in California.

13 So I'm on the one hand very much in favor of over
14 time bringing an end to the use of green waste materials
15 for ADC. On the other hand, I think we have to figure out
16 how we get there. And I think that's probably what the
17 Task Force spent its time wrestling with was some of the
18 issues.

19 I'm generally supportive of most of what the
20 staff has put before us. I don't know if we can do all of
21 them. But I think they all have merits to them. In
22 addition to the items that I think -- well, let me say in
23 particular the tipping fee and the phase out are two
24 things that I think we ought to focus on.

25 But in addition to that, there's a couple of

1 practical things I think we can add to our direction. One
2 was -- and I brought it up earlier, focus particularly on
3 those jurisdictions who are currently receiving diversion
4 credit for ADC at Puente Hills. The Board engaged
5 initially at least in surveying those jurisdictions and
6 making sure -- maybe we already have the information. I
7 don't know. But up to date information as we can about
8 what amount of credit we think is being allocated by
9 jurisdictions that depend on this.

10 And then report back to the Board on options for
11 partnering with those jurisdictions to help them
12 transition, help identify the alternatives. And this has
13 nothing to do with the policy argument. This has to do
14 with the reality on the ground this option is going to go
15 away and some diversion credit is at risk. And maybe this
16 is just going to happen automatically. But I think the
17 Board has a responsibility to know and ask the
18 jurisdictions to report to us and interact with them and
19 try to get a handle on what's going to be become of that
20 material and what the Board could do. We do then make
21 decisions about what we can do to be of assistance when we
22 know where the jurisdictions see themselves going and
23 whether they've done any planning or intend to do any
24 planning where the materials are going to go.

25 And the other thing -- and this popped into my

1 head while Yvonne was talking speaking of going down
2 memory lane. We have, as I mentioned, been involved in
3 pressure release mechanisms that are not -- so we don't
4 have hard and fast laws that people went up against. And
5 one of the major things that went on into the 939 process
6 was that we realized while we need to keep the goals in
7 place, we need to be flexible enough to recognize that not
8 all of the factors that would determine success were under
9 the local jurisdiction control. And therefore we needed
10 to allow for demonstration of good faith effort and a way
11 to show all of the steps had been taken, but they hadn't
12 resulted in what the law called for.

13 I don't have specifics to offer here, but it
14 seems like something like that as part of the seven-year
15 phase out that would say to local jurisdictions make an
16 effort to figure out what to do with the material and
17 then -- but then have a pressure release valve that at the
18 end of the seven years if it hasn't happened that they
19 have the ability to make the case that they've done
20 everything possible to get the material elsewhere and have
21 it succeed.

22 So that's just a vague concept. But it's one
23 other than a good faith effort type concept being attached
24 to whatever the Board does today might help us and could
25 potentially help the Legislature in the future when they

1 deal with this think about ways to bring the two sides of
2 the issue together.

3 Those are my thoughts.

4 CHAIRPERSON BROWN: Any others?

5 COMMITTEE MEMBER PEACE: I guess When I listen to
6 all these plans and listen to what everybody has to say,
7 Option 3 and 5 jump out at me like they go hand in hand
8 and you can't do one without the other. I realize they're
9 both legislative. But I think we need to get behind both
10 of those options.

11 Jurisdictions are now required to work together
12 to make sure they have 15 years of landfill disposal
13 capacity. I think it makes sense to also require them to
14 work regionally to make sure that they have the capacity
15 to divert, whether it's 50 percent or 75 percent of the
16 green waste that they generate, whether it's through
17 composting, whether through anaerobic digestion and
18 conversion technologies. But they need to come up
19 regionally with a plan of how they're going to do that.
20 And I don't think that they can do it without Option 5.
21 Really do have to do away with the diversion credit for
22 ADC for all the reasons mentioned.

23 But, you know, they can use ADC. I know
24 sometimes they need to use some of the green waste that
25 can't be used in composting. Or they have to truck in the

1 dirt. I'm not saying that they can't use it. But doesn't
2 make sense to get diversion credit for it.

3 And I think if we put our efforts behind Option 3
4 and 5 that 1 and 4 will follow. And sounds like the
5 climate change best management practices and some of the
6 other cities like San Jose and stuff are doing, they're
7 already thinking about the things in Option 1 and 4. And
8 I think we should go ahead and support the two bills over
9 in the Legislature that are dealing with the tipping fee
10 and fees on ADC and that, you know, they're already over
11 there and we can support those however we can. Those are
12 my comments.

13 COMMITTEE MEMBER PETERSEN: Okay. When we
14 started this item -- when we started. In listening to all
15 of this, from Chuck, Chuck and Matt and everybody and
16 Yvonne, holy cow, I mean, this thing is huge as far as
17 part of the waste stream and huge as far as market
18 development goes.

19 I'm an old time recycler. You've got to help
20 develop the market before we start collecting all this
21 stuff. And for me, as this Board, we have to start taking
22 a look at what we're going to do to help develop those
23 markets. It's going to be a myriad of things within those
24 regions. Because what you do in San Diego in all due
25 respect, Matt, Puente Hills is a long ways to Ventura.

1 And those guys with their trucking, the companies, the
2 cost of fuel, things are going to get pretty crazy out
3 there. So it's innovation. It's technology.

4 And this is huge. And for me, I look at all this
5 and I'm still absorbing this. And the staff did a great
6 job on this. And the working group did a great job on
7 this. But there is a lot to consider and a lot to decide
8 to do. And I just -- for me, it's regional. For me, it's
9 market development. And yes, it's a resource we shouldn't
10 be bearing and we have to figure out what to do with it.
11 What does that all mean? I don't know.

12 CHAIRPERSON BROWN: What does that all mean,
13 Gary?

14 COMMITTEE MEMBER MULÉ: Thank you, Madam Chair.

15 I, too, at the last meeting that we had this
16 discussion stated that I support market-based solutions.
17 And that hasn't changed. I really strongly believe having
18 been in the recycling business as Gary for a number of
19 years that again we can collect the stuff all day long,
20 but if we don't have markets for it, we're doing all of
21 this for nothing.

22 So we really need to look at this from a
23 market-based perspective and from a regional perspective.
24 And that's why I really appreciate Yvonne being here today
25 and talking about a market-based solution. And that is

1 local jurisdictions taking on the responsibility by
2 developing their own programs.

3 And frankly I think that what the Institute for
4 Local Government is doing through this program dovetails
5 nicely with Option 1, which is to develop the market and
6 the marketing plans for local jurisdictions.

7 So from the Option 1 perspective, I strongly
8 encourage staff to continue to work with ILC in developing
9 this concept, because I think it has a lot of merit. We
10 all know that governments, state government and local
11 government, are going to be our largest markets for this
12 material that they themselves generate. So I do support
13 that.

14 Also I really strongly support the co-location of
15 facilities. Michelle talked about what they're doing in
16 San Jose. I really think that again we all know that
17 siting these facilities specifically in southern
18 California where I worked for a number of years, it's
19 extremely difficult to site these facilities. Not to
20 mention the conflicts that we have with some of our sister
21 agencies on regulatory issues. So co-location to me has a
22 lot of merit, and we really need to take a strong look at
23 that and just start thinking in that direction. Really
24 just start thinking co-location. I mean, just make it
25 part of the planning process.

1 As far as Option 2, which is the fee, the tip
2 fee, I was amazed to hear that in Riverside County the
3 county does not charge for ADC -- tip fee for ADC, while
4 they charge a tip fee for regular municipal solid waste.
5 Now, I know that the county is pursuing a tip fee on ADC.
6 Again, I think in part that's up to the local government
7 to do. San Jose is looking at doing that. If you want to
8 do that, that's fine. But I also know that statewide we
9 need to look at increasing the overall tip fee and take
10 some of that money and use it to support organics-based
11 initiatives. I just think that's important as well.

12 Option 3, diversion processing capacity, we've
13 talked about that. I support that. If we have a
14 requirement in state law to require landfill capacity, I
15 don't see why we can't require some type of diversion
16 processing capacity whether it's regionally based or on a
17 municipal level.

18 I do have concerns about Option 4. I do not feel
19 that we should mandate diversion requirements for specific
20 products. I think it goes against the whole intention of
21 AB 939 which allows jurisdictions the flexibility for them
22 to figure out how they're going to reach their diversion
23 goals. So I just have some concerns with that and do not
24 support that.

25 And then on Option 5 as far as phasing out the

1 green material ADC, while I have some concerns about that,
2 I feel that if we do include some flexibility, as Member
3 Chesbro had talked about, I think that it's something
4 that, you know, I can support. Again, the devil's in the
5 details. So I encourage staff to pursue that as well.

6 And that concludes my remarks. Thank you, Madam
7 Chair.

8 CHAIRPERSON BROWN: Howard, did you get all that?

9 COMMITTEE MEMBER PETERSEN: Madam Chair, just one
10 other thing that just come to my brain real quick.

11 CHAIRPERSON BROWN: Quick, because I'm going to
12 lose my train of thought.

13 COMMITTEE MEMBER PETERSEN: When we take a look
14 at this on the diversion credit stuff, if on ADC we find
15 alternatives that we credit those diversion credits to
16 those other types of technologies. So whatever we're
17 doing in the marketplace, so there are diversion credit
18 there.

19 CHAIRPERSON BROWN: Okay. I think that you
20 probably got we're kind of -- there's a lot of ideas out
21 there that came to the table today.

22 I want to thank this work group. This unusually
23 put together work group. But, you know, for the lack of
24 any other way to develop a cohesive or non-cohesive group
25 that could come together with a difference of opinion and

1 a lot of ideas and different approaches, different regions
2 of the state, it certainly has lent a lot of information
3 to the process and helped us just the ideas and concepts
4 around all of that. And clearly jurisdictions are dealing
5 with this issue in a different way. And it needs to be
6 dealt with somewhat in a broad policy perspective.

7 But I think right now if I can go back and just
8 try to pull together what came from the dias, there are
9 several things on here that are statutorily would need to
10 be changed. And there is legislation that is moving in
11 the Legislature. We are providing technical assistance.
12 I think we need to continue to provide technical
13 assistance for those issues that are moving forward.

14 There's no denying there is tremendous linkage
15 between green waste, organics, and climate change which
16 surrounds everything that we do. So it's obvious that our
17 strategic directives, this Board's mission, and priorities
18 get this material out of the landfill and to the highest
19 and best use.

20 So I think what I've heard mostly from the Board
21 members -- and correct me if I'm wrong -- we definitely
22 need to prepare for a possibility of diversion credit
23 being eliminated and where that material will go. So
24 clearly market plans need to be developed in a toolbox.
25 And Michelle has the basis of a toolbox that can at least

1 begin that process.

2 Number four, staff looked at as a possibility to
3 be included in a toolbox if a jurisdiction wanted to look
4 at contracting. Just provide that as part of the toolbox
5 option.

6 Tipping fees is contemplated in the legislation.
7 We'll continue to work on that.

8 Processing capacity, I think that Larry came up
9 with a very good suggestion in the short term we can't
10 require them to start adding processing capacity to their
11 planning documents. But we can ask jurisdictions to let
12 us know who's using it for diversion credit, but also what
13 their plans are for the future of moving this material out
14 of the landfill. Because I think it is helpful. Included
15 in their annual reports it will help us.

16 And the next thing is to look at opportunities
17 for seven years down the road what kind of a demonstration
18 they can make for good faith effort on this.

19 Does that pretty much capture it in --

20 COMMITTEE MEMBER PEACE: Option 3, I know we'll
21 all saying is important. Are we saying go forward with
22 trying to get some legislation since it has to be
23 something that's statutory?

24 CHAIRPERSON BROWN: There are several vehicles
25 moving forward that are contemplating that. I think as we

1 talk about the tipping fee whether it's added, I think
2 there's more work that would be required of the staff how
3 that processing capacity would move forward. So I think
4 there's more work on our staff's part before we require
5 it. But as legislation moves forward, it may be something
6 that we add during the legislative process if we can work
7 out all the details.

8 COMMITTEE MEMBER PEACE: If 1016 goes forward,
9 how does getting rid of the ADC diversion credit fit into
10 that? I thought it was -- if 1016 passed it would just be
11 disposal.

12 CHAIRPERSON BROWN: I think I can set a meeting
13 for with you Mr. Sitts and John can explain how all the
14 calculation goes and changes from disposal to diversion
15 and because that's probably --

16 COMMITTEE MEMBER PEACE: Is it something we would
17 still need to do -- okay.

18 COMMITTEE MEMBER CHESBRO: So, Madam Chair, in
19 summarizing what you hear from us, are you suggesting that
20 the only action be just be a general summary or there's
21 some specific directions in terms of further staff work
22 that we can either approve your direction or consensus or
23 put a motion?

24 CHAIRPERSON BROWN: I think we've directed staff
25 to work on the marketing plans and the toolbox with local

1 jurisdictions.

2 The tipping fee is statutorily required. So we
3 directed staff to continue providing technical assistance
4 to the author of that bill, which we have been doing, to
5 advance our strategic directive.

6 Processing capacity, more work needs to be done
7 on how we would actually and what we would have to require
8 and what form for processing capacity.

9 COMMITTEE MEMBER BROWN: And as we sort of tied
10 that together with my suggestion with regards to the
11 southern California jurisdictions. So as a sub-component
12 of that, a focused effort by some staff to try to identify
13 a process by which we could try to be of assistance in
14 helping the southern california jurisdictions identify the
15 problem. And then what, if anything, that the Board can
16 be doing to support their efforts.

17 CHAIRPERSON BROWN: On the time frame I put on
18 that staff is to work with jurisdictions to include in
19 their annual reports which are next spring. So if you
20 come back with just a report.

21 And then suggestion four can be included as an
22 item in a toolbox.

23 And the diversion credit, Howard.

24 PROGRAM DIRECTOR LEVENSON: I think we have
25 sufficient direction on all of these certainly to provide

1 technical assistance on the legislative provisions. And
2 then to do work on the toolbox that will incorporate a lot
3 of the different suggestions we heard, co-location and
4 some of the contract mechanisms. Not as a mandate, but
5 just as examples of how locals might use those kinds of
6 provisions. There's a number of other things like that.

7 I agree processing capacity provision we would
8 need to do more work in order to provide technical
9 assistance and really the same thing on a phase out. Just
10 the details of how that might be measured and monitored
11 and reported would need a considerable amount of work on
12 the technical side to provide good assistance. So we can
13 do some --

14 CHAIRPERSON BROWN: I think some initial work
15 needs to be done on that, how that would work, especially
16 in light of whether it comes forward in a legislative
17 proposal. I know it's statutorily required, but we need
18 to be ready to answer the question should a phase out
19 occur, how do we see that working.

20 COMMITTEE MEMBER CHESBRO: And what are the
21 possible mechanisms that might allow local jurisdictions
22 to demonstrate that they've gone through a process of
23 trying to identify alternatives to ADC when it's not the
24 phase-out time period.

25 PROGRAM DIRECTOR LEVENSON: We did put a teaser

1 in the item about the exact provision. In eight we put a
2 provision in changes in diversion if we eliminated ADC as
3 a worst case scenario, recognizing that materials might
4 move elsewhere and perhaps we should consider some sort of
5 good faith effort. So we can do more work on what kinds
6 of factors people would have to show what kind of things
7 they have to show.

8 And then regarding the L.A. Puente Hills
9 jurisdictions, we can have our local assistance market
10 development staff engage those folks. We know which
11 jurisdictions have a major contribution to their diversion
12 credit from ADC at Puente hills. So we can certainly
13 follow up on that and come back to you as part of the
14 report cycle.

15 CHAIRPERSON BROWN: Good.

16 COMMITTEE MEMBER CHESBRO: As one little last
17 little bit of the I wish experience, one thing that did
18 make me feel better is they have something over there.
19 It's hasn't been implemented. It's being proposed called
20 mechanical biological treatment, which is about probably
21 makes ADC look good as a form of diversion from my initial
22 understanding of it.

23 It's basically stabilization of the material so
24 it's no longer subject to decomposition and reduction of
25 the volume and then putting it back in the landfill and

1 calling it diversion. They're not doing it, but it's
2 being proposed. So, you know, inappropriate ways of
3 avoiding diversion requirements exist elsewhere, not just
4 in California.

5 PROGRAM DIRECTOR LEVENSON: Madam Chair, if I can
6 make one more comment. I want to segue off something
7 Senator Chesbro and Member Petersen said about ADC being
8 part of the bigger picture and a myriad of things that
9 need to be done.

10 We are doing a lot of other things. The Board
11 has authorized in terms of developing specifications and
12 agriculture specification, working with Caltrans and the
13 greenhouse gas, the costs and benefits associated with
14 organics management. Those are the things that will help
15 drive market in the long run.

16 Some of those need funding which we certainly can
17 help provide more work on that as far as demonstration
18 projects. This does fit into a bigger picture the Board
19 is being very active on. And certainly the next item
20 we're going to be talking about some of the issues raised
21 about siting and the other regulatory agencies. So
22 there's a lot going on on a bigger context.

23 CHAIRPERSON BROWN: Thank you, Howard.

24 Well, since you brought up the next item, let me
25 suggest we take a five-minute break and then take up the

1 next item.

2 (Thereupon a recess was taken.)

3 CHAIRPERSON BROWN: Let's start up again.

4 Kristen, all members are present.

5 Shall we start again. We're going to try to get
6 through at least items C, D, and see how we do before we
7 take a brief lunch break, depending on how long these will
8 take.

9 So I think we're going to move next to C. Ted,
10 you're going to present. Oh, wait a minute. Before we
11 do, we have another story.

12 COMMITTEE MEMBER CHESBRO: One last thing and
13 I'll stop boring you with my stories.

14 One last thing that was really, really impressive
15 and a huge lesson for California, you know, they have I
16 think I tried do my euro-dollar calculation. The
17 Equivalent of about 30 cents a bag fee on plastic grocery
18 store bags. And two observations. One is I didn't see a
19 single bag hanging from a tree or blowing down the
20 street. And I went in the grocery store, and every single
21 person, 100 percent, in line had reusable bags. So, you
22 know, if California is anything like Ireland I don't see
23 why we can't do the same thing.

24 COMMITTEE MEMBER PETERSEN: We can do the bags.

25 COMMITTEE MEMBER CHESBRO: Anyway, it was very

1 exciting. I think it illustrates a reasonable incentive
2 can move people that want to do the right thing that are
3 distracted to say let's make the change. It's been
4 incredibly effective. I hope we can do the same thing.
5 That's all.

6 CHAIRPERSON BROWN: I got my bags.

7 PROGRAM DIRECTOR RAUH: Thank you, Chair Brown
8 and members.

9 This item is a continuation of a Board directed
10 effort to identify actions that the Board can take to
11 improve the siting and increase the capacity of organic
12 diversion facilities. I'm waiting for the slides to come
13 up here.

14 (Thereupon an overhead presentation was
15 presented as follows.)

16 PROGRAM DIRECTOR RAUH: There we go.

17 As you can see from the first overhead, there's a
18 significant amount of background to this item beginning
19 first with the Board adoption of Strategic Directive 6.1
20 and the development of a goal for organics diversion and
21 then the Board's adoption of the organic road map which
22 included within it an effort to proceed and for the staff
23 to proceed with an assessment of siting opportunities.

24 --o0o--

25 PROGRAM DIRECTOR RAUH: In that regard, the staff

1 began an extensive stakeholder effort, which we have
2 documented in the item that we presented to you last month
3 and over 4,000 stakeholders participated in electronic
4 surveys. We had 250 who actually returned surveys. The
5 rest just clicked off the survey itself.

6 And then with the help of a significant number of
7 key people from the sustainability program, 50 in-depth
8 interviews were conducted and also held two workshops that
9 were attended by a large number of folks. All together
10 well over 300 different stakeholders participated from
11 across the state.

12 The recommendations that came from this effort
13 were originally presented in the May item in which we
14 showed a large matrix of well over 100 plus ideas that the
15 Board can pursue. And from that discussion you asked that
16 we reduce that number and focus --

17 --o0o--

18 PROGRAM DIRECTOR RAUH: -- the number. And in
19 doing so, the staff produced the matrix in the Board Item
20 you have today. And that particular item tended to focus
21 the effort down into eight outcomes or eight visions that
22 if effectively carried out would improve our ability to
23 site needed facilities for organics diversion. And also
24 it tended to focus those eight strategies into a series of
25 additional tasks and steps that could be followed by the

1 State. And looking at those, you also asked the staff
2 itself to give you suggestions or at least to identify for
3 you the things that we're already doing and have been
4 directed through strategic directives and other actions of
5 the Board. And we asked ourselves these questions as we
6 went through that process.

7 --o0o--

8 PROGRAM DIRECTOR RAUH: We came out with again
9 the same provisions that are listed in the presentation
10 and the matrix in the item. And here then are some of the
11 staff's views of what we're actually doing to try to carry
12 out those individual outcomes.

13 First in terms of the initial approach or one
14 which is a coordination. And this by the way was the
15 number one vote getter of all of those who participated
16 that we would benefit greatly by improved coordination of
17 environmental agencies at the state, regional, and at some
18 cases local level.

19 The approaches identified certainly are within
20 the purview of the Board. One would be to work through
21 Cal/EPA to see Cal/EPA take on a coordination role. And
22 the other would use the Board's unique responsibility and
23 vision, which is looking across the state at the overall
24 waste management area and bring in the other boards that
25 have specific environmental concerns to develop some joint

1 positions and approach to how to effectively take their
2 concerns into consideration while we move forward with
3 waste diversion goals in the state. And with the impetus
4 for greenhouse gas emissions as an overarching factor, I
5 think there is a climate there that this can happen.

6 So the steps that we're suggesting, first we're
7 suggesting the approach that the Board exercise continued
8 leadership in this area. And that as a kick-off to that
9 that the Executive Director could conduct some specific
10 meetings with key leaders in the water and the air area,
11 which to a certain extent have taken place. And from
12 those specific targets, areas of opportunity can be
13 identified with specific products to be developed by the
14 joint staff efforts and then subsequently those brought
15 back in a joint Board format. So that would be the first
16 area for dealing with improving the overall climate for
17 coordination in the state.

18 --o0o--

19 PROGRAM DIRECTOR RAUH: The second has to do with
20 coordinating the facility regulatory process which is a
21 sub-set of the first one. And here there's quite a bit of
22 activity already underway. And I've listed these, and
23 we've actually talked -- both Howard and myself have
24 talked with the Board about these activities at the
25 previous meetings. But as you can see, there's efforts

1 working on organic issues and regulatory framework with
2 both water boards, regional water boards, and with air
3 pollution control districts and most recently when the
4 presentation was made on the greenhouse gas emissions
5 effort of the ARB it was announced the fact that the ARB
6 with our help is sponsoring a joint effort including air
7 pollution control districts to look at some of the issues
8 that are effecting organics siting.

9 So there's quite a bit of activity there. And
10 what we see are the steps staff are to continue in this
11 effort and to continue to identify the opportunities for
12 which we can build these bridges and bring back solid
13 evidence of better coordination and integrated thinking.

14 --o0o--

15 PROGRAM DIRECTOR RAUH: The next item is the
16 Board as facilitator and a repository of research and
17 technical studies. And in this regard, you have already
18 approved the search methodology. And staff in the
19 sustainability program has already begun to categorize
20 research and to post studies. And that's just an ongoing
21 activity that clearly needs to continue and grow.

22 The life cycle analysis contract also was
23 sponsored and will be executed by sustainability program
24 is a key component to this effort, because it will help us
25 understand what the regional needs from a siting

1 perspective are that fits right into your discussion and
2 direction on the last item as well.

3 --o0o--

4 PROGRAM DIRECTOR RAUH: Information and resources
5 and tools: Here again a key area there is publicizing the
6 results of these studies and the work that we're doing on
7 a localized effort with air pollution control and water
8 districts to make sure that we are getting that
9 information across from a statewide perspective.

10 This again is the research agenda, but it's
11 getting the information in the public hands. It also fits
12 in with your discussion earlier of the toolbox and relates
13 directly in that area as well.

14 And I would like to mention one area that fell in
15 item two, of course, is the agenda that you've established
16 for us for establishing regulatory improvements, and those
17 also are largely directed at organics.

18 --o0o--

19 PROGRAM DIRECTOR RAUH: Moving on to Item 5,
20 adequate planning capacity. Again there was quite a bit
21 of conversation and suggestion about the need for local
22 planning capacity. We have the infrastructure study under
23 way, review of local diversion plans. In fact, you
24 already directed the staff to increase our effort in that
25 regard. So I think the fact that we have those plans

1 coming through this five, six cycle and the opportunity to
2 look at their plans to deal with organics will be critical
3 to helping form both a regional and a statewide siting
4 perspective.

5 --o0o--

6 PROGRAM DIRECTOR RAUH: Education and outreach, a
7 lot of input there. Clearly, the Board in the past has
8 taken steps to identify tools and other information in
9 organics both oriented toward the public and local
10 government. Certainly gave staff direction to continue
11 that effort.

12 We also have the K through 12 curriculum
13 development project. I think the word laudable up there
14 is because many people would like the Board to do
15 everything in this area. I think we have to look at the
16 efforts that being done at all levels of local government
17 and try our best to be able to provide a place where that
18 information can be housed and not look to try to develop
19 it all of ourselves.

20 --o0o--

21 PROGRAM DIRECTOR RAUH: The enforcement strategy:
22 Again, Strategic Directive 8.3 directed the staff to focus
23 on full implementation of our regulatory authority from a
24 compliance perspective. And we reported several times on
25 our progress there and will be next month as part of the

1 report on strategic directives 4 and 8. But I think we
2 can say that we've implemented the Board's direction of
3 taking a more aggressive stance on enforcement and on
4 compliance, and I think you'll see the results of that
5 next month.

6 Economic incentives, again another area which you
7 certainly talked about on the earlier item. And I think
8 from this perspective sustainability program is looking at
9 some options as part of the organic road map and clearly
10 would be coming back later this year with additional
11 suggestions in that area.

12 That basically concludes my summary presentation.
13 And both Howard and I are available here to answer any
14 questions.

15 CHAIRPERSON BROWN: Thank you, Ted.

16 Anybody have any questions?

17 I think on the heels of the last item they go
18 hand in hand. I think one of the things we did hear on
19 the last item is some of the outreach needs to be more
20 focused on number six. I know we're doing some things and
21 we can't do everything. It needs to be focused in that --
22 it's actually in Howard's item. Marketing and outreach to
23 the public to understand. I think a lot of our efforts
24 have been to beneficial use. But I think we need to at
25 least see what's out there and maybe work on some public

1 information that dispels those rumors about the smelly
2 stinky odors of compost.

3 But I think the work that we're doing with cross
4 media with the air and water boards and the regional
5 agencies is excellent. We need to continue to do that
6 obviously, because that will inform the process as we move
7 forward. But all of these -- I know we can't do them all.
8 But we need to focus on them all and see what we can do.

9 We do have a couple of speakers. So I'll invite
10 them forward. First is Evan Edgar.

11 MR. EDGAR: Good morning, Chair and Board member.
12 My name is Evan Edgar representing the California Refuse
13 Removal Counsel and 15 permitted compost facilities in the
14 state of California and a lot of agriculture compost
15 facilities in Ventura County who would like to do some
16 drought measure mitigation by using more compost on the
17 orchards. That's a great mitigation measure for drought.
18 Matt Cotton has some great comments on fertilizer indexing
19 and drought and a great tie-in on the life cycle analysis
20 to include the use of compost in those applications.

21 We supported the road map. We supported all the
22 outcomes and looking for destinations on the organic
23 highway, because we have a lot of compost to move and
24 amount of facilities are great. So we support all the
25 outcomes and priorities. I think staff has done a great

1 job on putting the work group together and having a road
2 map to get there. And we look forward to the
3 implementation and outcomes. Thank you.

4 CHAIRPERSON BROWN: Always something quotable
5 when it comes from Evan. Designations on the organics
6 highway.

7 Next is Larry Sweetser.

8 MR. SWEETSER: Good morning, again. Larry
9 Sweetser on behalf of the Rural Counties Environmental
10 Services Joint Powers Authority.

11 I do want to compliment the Board on the huge
12 undertaking. As probably many will say, in order to
13 reduce organics, a lot of the steps are going to be
14 essential to the success of the program. And I want to
15 make sure we don't get left behind. I'll be one of the
16 first to volunteer if there is a work group just to make
17 sure that the solutions work in the smaller jurisdictions
18 as well as the large. Thank you for your efforts.

19 CHAIRPERSON BROWN: Thank you, Larry.

20 Mike Mohajer.

21 MR. MOHAJER: Good morning again, Madam Chair,
22 and members of the Board. My name is Mike Mohajer, and
23 I'm speaking on this item as myself and not representing
24 the Task Force or any other organizations.

25 CHAIRPERSON BROWN: We're going to ask you to

1 bring hats next time so you can put on one hat and then
2 change it and put on the other hat.

3 MR. MOHAJER: Well, considering the financial
4 resources of L.A. County, and I'm insisting for paying for
5 my own expenditures as a free public service.

6 But being involved with the solid waste issue for
7 at least 30-some-odd years, longer than the Senator, I
8 wanted to really thank the Board for recognizing the
9 importance of the issue. And also I want to commend the
10 staff for all the hard work they did in putting this
11 report together. And specifically also one of the
12 problems that I had before that they have addressed that
13 by including the conversion technology into the waste
14 diversion facilities.

15 There are two issues that I think it needs some
16 clarification. At least one of them needs clarification.
17 And that comes to really the definition of organic. What
18 is organic. That is very critical. I sort of made some
19 reference to it on the previous presentation. So there is
20 no statutory definition or regulatory definition for the
21 word organics. So the word organic has a different
22 meaning to different people. So I looked at Webster
23 dictionary last night as a part of sending in my comments
24 and basically says that related to living organism and
25 having carbon compounds.

1 So looking at this and looking at the waste
2 characterization study that your Board did and the result
3 came out in 2004, approximately about 75 percent of the
4 waste being disposed in landfills -- this is based on what
5 happened in 2003. And you're doing another study this
6 year -- is made of organic materials.

7 So the question comes over here whether you are
8 talking about as part of your directive number six and as
9 a part of your discussion over here and as a part of the
10 AB 2640 that legislative is addressing what is the
11 organic. Are you specifically referring to the
12 compostable organic as was the case when you took action
13 on this item last December, December 11, Item 15? Or are
14 you talking about organic as you're discussing on today's
15 discussion?

16 Ultimately looking at from diversion rate if the
17 organic is exactly definitions used in the Webster
18 dictionary means if AB 2640 goes through at a 50 percent
19 reduction organic waste by 2020, you're talking about
20 mandatory diversion rate of 85 percent of every
21 jurisdiction. That's what it calculates out. So it is
22 really critical for you to define what your intent is as
23 the word organic.

24 And as I said that I'm going through different
25 report as sort of being engineer and not a politician is

1 sort of a flip-flop. One day it's this. One day it's
2 something else. And I'm saying being from the standpoint
3 being down in the trenches for 35 years, these sort of
4 things is going to come back and later on bite you in the
5 leg as -- that's the simplest way I can say it.

6 The second issue in reference to the conversion
7 technology, I was really pleased to hear city of San Jose
8 speaking about co-locating they're also looking at
9 conversion technology and gasification. So just my whole
10 body starts shaking to hear that from city of San Jose.
11 And this is something that Los Angeles County and we have
12 been promoting for a number of years going back since
13 1990.

14 However, I'm somewhat disappointed with the staff
15 recommendations. And I'm going to read what I wrote last
16 night so I don't have to fumble through my words and say
17 inappropriate words.

18 I said, while I support including of the task of
19 conversion technology in the definition of diversion
20 facility, I'm disappointed that discussion and recommended
21 options reference conversion technology fails to recognize
22 finding of, A, your Board AB 277 studies that took you
23 three years to put that study together for conversion
24 technology at the expense of one and a half million
25 dollars and has gone by the wayside. We went through

1 tremendous effort statewide to put that report together.

2 There is no reference to that.

3 The efforts by the L.A. County on the conversion
4 technology that we are having conducted, the State
5 bioenergy action plan, the State interagency bioenergy
6 working group, there is no reference to this stuff. And
7 so while the item has been ignored, the recommendation
8 places principle reliance for development and siting of
9 conversion technology facilities on soft solution, such as
10 more committees, more studies, more clearinghouses, local
11 government assistance, and public education.

12 As such, regardless of what your definition of
13 organic is, your goal of 50 percent for directive number
14 6.1, this thing won't put any facility on ground other
15 than creating more wastepaper, which is also part of the
16 organic waste. Thank you.

17 CHAIRPERSON BROWN: Thank you, Mike.

18 Anybody have any questions?

19 Would you like to define organic, Howard?

20 Since this was just a discussion item, I think
21 that what's appropriate at this time is to tell you guys
22 have done an excellent job to this point in putting this
23 material together, and we need to -- obviously we know the
24 direction we need to go. Hand in hand with the previous
25 item we need to continue working on cross media issues

1 especially. So go forward and conquer.

2 Any other questions? Good job.

3 Okay. Let's move to Item 12.

4 PROGRAM DIRECTOR LEVENSON: Item 12 is our
5 consideration of adjustments to the e-waste recycling fee
6 to maintain the solvency of the fund.

7 And I think while Jeff is getting up here, as
8 Jeff has reminded us quite a bit over the last few months,
9 the Board has to reevaluate e-waste's program revenue
10 needs annually and if necessary adjust the fee levels to
11 maintain funding solvency.

12 I don't think there's anyone in this room who
13 might be listening or may not be listening who isn't aware
14 of the need to make such adjustments.

15 We have to undertake those actions now in order
16 to make the necessary adjustments by the statutory date of
17 August 1st. And regardless of whether the Board acts
18 today or next week or next month, changes won't take
19 effect until January 1st per statute. So we have less
20 flexibility in terms of implementation than we had last
21 month on the recovery and recycling fee.

22 I think making specific recommendations to change
23 the fee structure is very difficult as you can see from
24 the amount of information that's presented in this item.
25 There's little guidance in statute that tells the Board

1 what factors to consider other than the need to maintain
2 the fund solvency. And as Jeff will describe, there's a
3 lot of assumptions we have to make about the growth of
4 discarding CEWs, the sale of new CEWs and so on, the
5 impact of the digital turnover.

6 So I think overall staff is considering all these
7 factors and made what we consider to be a conservative
8 prudent recommendation about preserving the fund's
9 solvency and the kinds of fee structure we need to do
10 that. It retains the current three-size fee structure and
11 it takes a pretty conservative approach.

12 Jeff will go through all this in more detail. I
13 just want to end by saying if you do want us to do some
14 different scenario runs, some slightly different changes
15 on the fee structure, we would be happy to get that
16 direction today. We can do those in time for the Board
17 meeting next week. And I think we can certainly hopefully
18 wrap this up this month.

19 With that, I'll turn it over the Jeff.

20 (Thereupon an overhead presentation was
21 presented as follows.)

22 BRANCH MANAGER HUNTS: Thank you, Howard. Good
23 morning -- good afternoon, Madam Chair and Committee
24 members. My name is Jeff Hunts. I'm manager of the
25 Board's Electronic Waste Recycling Program.

1 The item before the today is the complimentary
2 component of the Board's fiscal responsibility exercise
3 relating to the covered electronic waste recycling payment
4 system, a program established pursuant to the Electronic
5 Waste Recycling Act of 2003.

6 The Act charged the Board with the obligation and
7 the opportunity to manage the revenue and expenditures
8 associated with the covered electronic waste program,
9 recognizing that conditions would change over time and
10 that adjustments would be necessary.

11 Last month, the Board undertook the required
12 correction to the recovery and recycling payment rates
13 based on directives provided by the Act and data provided
14 by participating organizations.

15 This month, the program comes before the Board
16 with the other piece of the financial puzzle, which is the
17 necessary modification to the covered electronic waste
18 recycling fee paid by consumers in California when
19 purchasing a covered electronic device. The fee which
20 funds all aspects of the program has remained unchanged
21 since first established in the legislation. But the
22 continuing growth of the CEW recovery and recycling
23 program now requires that the Board act to keep the
24 electronic waste recovery and recycling account solvent.

25 The Act provides the Board with minimal guidance

1 as it undertakes this responsibility stating only that the
2 fees must be adjusted to maintain sufficient revenues to
3 fund the CEW recovery and recycling payment system and
4 associated State operations.

5 Program has analyzed available data and brings to
6 the Board a recommendation that it believes is equitable
7 and fiscally prudent. The fact that the Board has the
8 authority to re-visit the fee annually provides for a high
9 degree of flexibility allowing to Board to conservatively
10 plan for uncertainties and contingencies now and
11 correcting as and if warranted and necessary through
12 subsequent experience.

13 --o0o--

14 BRANCH MANAGER HUNTS: So I today want to recap
15 the program's statistics, where we are to date, give an
16 analysis of the fund condition and an overview of
17 financing models, review some future uncertainties that
18 argue for prudence, and make a staff recommendation.

19 --o0o--

20 BRANCH MANAGER HUNTS: The Act did establish a
21 payment system for the recovery and recycling of covered
22 electronic waste. The only waste from California sources
23 are eligible and must be processed in California or
24 canceled in California. And the Board as I mentioned last
25 month set payment rates to cover the average net cost of

1 that activity.

2 The system is funded through a fee paid by
3 consumers of new devices. The Act charges DTSC with the
4 responsibility of determining what constitutes a covered
5 electronic device. And with that information the Board
6 determines a fee structure to maintain fund solvency.

7 --o0o--

8 BRANCH MANAGER HUNTS: This is a very familiar
9 graphic. If you look closely, we've updated it. We have
10 removed the old payment rate numbers at the bottom and
11 spruced it up a little bit. We'll be focusing today on
12 the green box at the top where it says fee paid at
13 purchase.

14 --o0o--

15 BRANCH MANAGER HUNTS: Historically, revenues
16 flowing into the program has continued to grow beginning
17 with the half year of operation \$31 million. Staying
18 about 78 million for two years. And then we project about
19 \$83 million coming in this fiscal year. And that's
20 asterisk because market data is showing that first quarter
21 of 2008 was a little soft in terms of sales. And so we
22 may not be realizing the amount of revenue that we were
23 originally expecting.

24 Meanwhile, the recovery rates of covered
25 electronic waste has steadily climbed from 24 million

1 pounds the first fiscal year, 95 million, over 150 million
2 pounds. And we are projecting close to 200 million pounds
3 this fiscal year.

4 --o0o--

5 BRANCH MANAGER HUNTS: However, we have seen a
6 little softening in the collection rates. This graph
7 shows the quarterly amounts of covered electronic waste
8 claimed in the system. In third quarter of 2007, we
9 reached 50 million pounds. And then pretty much repeated
10 that that in the fourth quarter.

11 In the first quarter, we bumped up to 51 million
12 pounds. We have experienced flat lining before in fourth
13 quarter to first quarter '05 and '06 and third
14 quarter/fourth quarter of '06, softening only for recovery
15 rates to take off again.

16 --o0o--

17 BRANCH MANAGER HUNTS: In looking at the Board's
18 overall financial considerations, we're responsible for
19 the fund. And at current rates of recovery and at payment
20 rates even with the reduced payment, the electronic waste
21 recovery and recycling account is forecast to be depleted
22 this year sometime later this fall.

23 The Board has the authority to make adjustments,
24 as I noted. And the main adjustment to maintain -- the
25 only adjustment to maintain solvency is to our revenue

1 source. And that is currently a six, eight, or ten dollar
2 fee on the retail sale of covered electronic devices. We
3 use that money to meet our cost demands which is the
4 operation of the Waste Board, Board of Equalization, and
5 some State Controller Office operations.

6 But by far, the majority of money is used for the
7 recovery and recycling payments. We went from a 48 cents
8 a pound total payment and go to an interim period of 43
9 cents a pound. And we'll come September 16th of this year
10 reach 39 cents a pound.

11 --o0o--

12 BRANCH MANAGER HUNTS: So we have the obligation
13 to adjust the fee to ensure fund solvency. And statute
14 provides minimal adjustment direction other than saying
15 adjust the fee to maintain solvency.

16 We must act on or before August 1st. And as
17 Howard noted, any adjustments would not take effect until
18 January 1st of the following year.

19 The degree and the structure of the adjustments
20 will be dependent upon what we anticipate our needs and
21 trends to be. The program growth, what we believe will be
22 continued growth in the amount of material collected. And
23 the new payment rate will effect our need. And the
24 evolving mix of covered electronic devices, the sizes, and
25 the types of devices that are included as covered

1 electronic devices and the overall total units sold will
2 inform the fee structure.

3 --o0o--

4 BRANCH MANAGER HUNTS: Historically, we've seen
5 around ten million units sold. It has stayed fairly
6 steady. For 2008 we were originally projecting about
7 eleven-and-a-half million devices sold. And working with
8 the budget office we revised that downward to about
9 ten-and-a-half million devices sold to economic slow down.
10 We want to take that into account.

11 And then how the allocation of CED screen sizes
12 has changed over time from 2005 to 2007. So much of this
13 is due to the availability of large screen televisions.
14 You can see that four percent of overall CED sales in 2005
15 were in the largest screen size. That's 35 inches and
16 above and that went up to eleven percent. Meanwhile, the
17 middle category which includes both televisions and
18 computer monitors and goes from 15 inches to 35 inches has
19 declined slightly.

20 --o0o--

21 BRANCH MANAGER HUNTS: So we put together
22 several models for the Board to consider. And in these
23 models, the loan amount changes. And the loan amount is
24 dependent upon what we anticipate to be the covered
25 electronic waste recovery volumes when we will be repaying

1 the loan by late 2010.

2 We are targeting an average revenue per device
3 sold. The fee would be different depending on the screen
4 size, but we're looking at an average revenue per device
5 sold. And the current average on the six, eight, and ten
6 dollar fee structure is about \$7.64 per device.

7 Because we can't see the future, we are going to
8 be using 2007 levels for overall -- approximately 2007
9 levels for overall sales volumes and the size and
10 distribution. And we are aiming to remain solvent for
11 two-plus fiscal years. Recognizing that by the time we
12 anticipate or identify a troublesome trend, it might be
13 too late to act if we only are shooting for one year.

14 --o0o--

15 BRANCH MANAGER HUNTS: So model one assumes no
16 program growth, that we've maxed out, that we'll be
17 bringing in about 50 million pound per quarter or 200
18 million pounds per year. This would require the Board to
19 get a loan of approximately \$6.6 million to get through
20 this fiscal year until the enhanced revenue kicks in and
21 would also require us to target about a ten dollar per
22 device revenue.

23 The grid at the bottom there shows the total
24 amount of revenues coming in based on CED sales, minus the
25 three percent administrative fee that the retailers get to

1 keep. Shows how many pounds we anticipate being recycled,
2 the payments based on the current payment rates, and all
3 other expenditures includes the State operations, the
4 Waste Board, DTSC, BOE, and some contingency funding shows
5 the loan repayment as a cost demand. And in the year-end
6 balance, which includes a three percent prudent reserve
7 that is provided for by the Act -- the Act says we can
8 maintain up to a five percent prudent reserve.

9 So there at the blue bar across the middle are
10 possible fee structures that the Board could select if we
11 went with no more growth in the program.

12 --o0o--

13 BRANCH MANAGER HUNTS: Model two assumes a
14 moderate rate of growth of about two million pounds
15 additional pounds per quarter. This would require about
16 eleven-and-a-half million dollar loan from the Tire Fund
17 and targets a \$12.25 average revenue per device sold. And
18 then the possible fee structures are across the middle
19 there again.

20 --o0o--

21 BRANCH MANAGER HUNTS: And then finally model
22 three assumes what is the historical program average
23 growth, which has been about four million pounds per
24 quarter. And this would require approximately
25 15-and-a-half million dollar loan to the account and

1 targets a \$15 dollar revenue per device sold. So
2 essentially almost doubling the overall fee revenue.

3 Possible fee structures to achieve this average
4 per device revenue: 6, 16, 30; 7, 16, 27; 8, 15, 31.

5 What I wanted to point out here is just how
6 changes in one number effects another. And in looking
7 between those third and the fourth structures there, by
8 just lowering the 15 to 35-inch, the middle screen size,
9 one dollar requires if we want t make up that revenue
10 requires us to raise the fee \$6.00 on the upper end.

11 And program received minimal input from what we
12 thought -- where we thought we would receive more from
13 stakeholders. We received some from a large entertainment
14 electronics interest and some from a California-based IT
15 interest.

16 On the IT interest side, they said, well,
17 monitors are pretty much in the middle category. The
18 upper category is television. Your average television
19 weighs two to two-and-a-half times what the monitor is.
20 So therefore the upper fee category should be twice or
21 more what the middle category is.

22 And then entertainment interest said when program
23 was discussing wanting to be more equitable in the fee
24 distribution don't tie the fee to the price of a device.
25 Just because something is expensive shouldn't mean it has

1 a high fee on it.

2 Well, what we went with was kind of a hybrid of
3 all of that thinking, but most importantly stability in
4 the fund. We want to protect the fund in our projections
5 from volatility. And while in looking at those trends I
6 showed earlier about the growth of large screen scales, we
7 also feel that size category is most subject to perhaps
8 economic downturn. And if we put all of our eggs in that
9 basket by sticking it to the big screens, that we could
10 incur a revenue loss. Whereas, the stability of the
11 mid-range with the modest fee could provide less
12 volatility.

13 --o0o--

14 BRANCH MANAGER HUNTS: So what staff is
15 recommending today is a new fee structure of 8, 16, and 25
16 dollars based on the existing screen size categories. I
17 believe this provides for better economic equity than
18 exists under the 6, 8, and 10 dollar fee structure. It
19 keeps the lowest rate fairly low and the highest rate
20 below \$30, which -- by the way, the one other input from
21 the California Retailers Association was please keep the
22 highest rate below \$30.

23 And as I just said, the moderate fee on the
24 middle range devices provides a more stable source of
25 revenue and reduced risk for volatility.

1 --o0o--

2 BRANCH MANAGER HUNTS: But the question is why
3 are we going with the large program growth. And it really
4 comes down to one idea, and that's uncertainty about what
5 the future holds. We have seen the program continue to
6 grow. We've seen the program flatten before, only to take
7 off.

8 We have several facts and milestones ahead of us
9 that could greatly influence the volume of covered
10 electronic waste coming into the system. The one that we
11 know about definitely is the impact of digital television
12 broadcasting. The Consumer Electronics Association is
13 estimating that more than 15 million TVs will be discarded
14 nationally and pro rated to California. In converting for
15 pounds, that could be an additional 100 million pounds
16 coming into the system over the next few years. Only 40
17 percent or about half of the households surveyed are
18 planning to get converter boxes.

19 And that 15 million number of TVs discarded seems
20 to be tied to direct replacement as opposed to what I'll
21 refer to as the forgotten obsolete device that's in
22 storage now. It's in the closet. It's in the garage that
23 a consumer will now wake up on February 20th of next year
24 when things going o static and the analogue range and
25 decide, well, I'm going to get rid of this one as well.

1 --o0o--

2 BRANCH MANAGER HUNTS: The other future
3 uncertainty is the program growth which I just pointed
4 out. Things have flattened. They've flattened before
5 only to pick up. We know there is a large volume of
6 covered electronic waste out there. While the program has
7 been very successful in the amount of material that has
8 been recovered, the fact that we are selling more -- the
9 way the fee is structured in order to maintain solvency to
10 be sustainable, we have to sell more devices. Or more
11 devices have to be sold in California than recovered. For
12 the first couple of years of the program that was running
13 at about five devices sold for every one covered. And
14 four devices sold for every one covered.

15 Simple math tells us we have more covered
16 electronic devices out there in use now than we did when
17 we started this program. And while many of those perhaps
18 most of those in recent years are new technology flat
19 screens, over the last decade the quantity of material
20 that has been consumed and remains in households either in
21 use or in storage far exceeds what we've recovered so far
22 so that the potential for collection is substantial.

23 And we have a collection infrastructure that
24 continues to grow. We have 600-plus collectors. While we
25 kicked them out for wrongdoing, more sign up every day.

1 So we have a robust collection infrastructure.

2 --o0o--

3 BRANCH MANAGER HUNTS: So in summary, several
4 key factors for the Board to consider.

5 We have a looming fund depletion. We have to
6 act. That the loan looks probable is a great patch, but
7 we have the responsibility to re-set the fee to maintain
8 solvency.

9 Program growth may be slowing, may not. Clearly,
10 it can't go on forever. But I don't believe that we are
11 peeked yet. That future discard rate is very unclear.
12 There is a huge volume of material still in use. DTV
13 impacts have not been fully realized yet.

14 So the Board has the authority to make the fee
15 adjustments. Have to ensure account solvency. We should
16 do that looking beyond next fiscal year.

17 The structure of any adjustments can provide more
18 equity in terms of the fee payer and stability for revenue
19 source. And the ability to adjust annually allows the
20 Board to be conservative now, plan for a worst-case
21 scenario. And next year if we find ourselves in a better
22 situation, we can act to make adjustments.

23 So staff recommends adjusting the fee to \$8, \$16,
24 and \$25 for the existing three size categories.

25 CHAIRPERSON BROWN: Thanks, Jeff. Again another

1 thorough analysis. You guys come up with questions that I
2 wouldn't necessarily think of. And you've answered them.

3 Anybody have any questions?

4 Do we have anybody scheduled to speak to this
5 item? Wow. Okay.

6 Do I have a motion?

7 COMMITTEE MEMBER MULÉ: Madam Chair, I'd like to
8 move Resolution 2008-96 Revised.

9 COMMITTEE MEMBER PETERSEN: I'll second it.

10 CHAIRPERSON BROWN: It's been moved by Member
11 Mulé and seconded by Member Petersen.

12 Kristen, can you call the roll?

13 EXECUTIVE ASSISTANT GARNER: Chesbro?

14 COMMITTEE MEMBER CHESBRO: Aye.

15 EXECUTIVE ASSISTANT GARNER: Mulé?

16 COMMITTEE MEMBER MULÉ: Aye.

17 EXECUTIVE ASSISTANT GARNER: Peace?

18 COMMITTEE MEMBER PEACE: Aye.

19 EXECUTIVE ASSISTANT GARNER: Petersen?

20 COMMITTEE MEMBER PETERSEN: Aye.

21 EXECUTIVE ASSISTANT GARNER: Brown?

22 CHAIRPERSON BROWN: Aye.

23 COMMITTEE MEMBER CHESBRO: I've been in politics
24 for a long time, and I don't know that I have ever voted
25 for a fee increase that didn't have any significant level

1 of protest. But I know there is a lot of factors
2 involved, but one of them is clearly your good work, Jeff.

3 (Applause)

4 CHAIRPERSON BROWN: And I will say for you and
5 your entire team, because I know it was -- you had a lot
6 of people back there that have helped put all this
7 information together. Thank you all very much.

8 COMMITTEE MEMBER PETERSEN: Because they're so
9 thorough, that's why nobody is here.

10 PROGRAM DIRECTOR LEVENSON: This is consent, of
11 course.

12 CHAIRPERSON BROWN: Physical consent, yes.
13 Physical consent.

14 Do we have time to quickly do the next item or
15 would we prefer lunch back and come back at like 1:00?

16 EXECUTIVE DIRECTOR LEARY: Your choice.

17 CHAIRPERSON BROWN: Let's do one more and then
18 come back at 1:00. One more and then break for lunch and
19 then come back.

20 Go ahead. Get started.

21 DEPUTY DIRECTOR ESTES: My name is Tom Estes. I'm
22 Deputy Director for Administration and Finance. And as
23 promised last month, we're bringing back our plan with
24 respect to implementation of Strategic Directive 10,
25 fiduciary responsibility. And you had the update last

1 month.

2 George Mendoza, whom I introduced as my Senior
3 Management Auditor, will go ahead and present the plan.
4 He will try, recognizing that everybody is hungry, he will
5 try to do that as quick as he can. But this is his first
6 Board item, so no pressure there.

7 AUDITS SUPERVISOR MENDOZA: Good afternoon, Chair
8 Brown and Board members. My name is George Mendoza. I'm
9 the Audit Manager with the Audit and Evaluation Unit
10 located in the Administration and Finance Division.

11 I appreciate and thank you for this opportunity
12 to present our proposal on Strategic Directive 10,
13 entitled fiduciary responsibility. Today, I will present
14 our plan for implementation and obtainment of Strategic
15 Directive 10 to include our proposed revisions to three of
16 the five sub-directives.

17 As Tom stated at last month's update to you, this
18 is a comprehensive audit plan and included as an audit
19 category is u-waste.

20 First, the brief background on our approach to
21 formulating this audit plan. Staff reviewed all of
22 CIWMB's programs to ensure all physical processes were
23 included in the planning for and implementation of this
24 audit program. As part of this review, staff identified
25 three areas that impact how SB 10 is implemented. These

1 areas are expansion of audit categories, targeted audit
2 rate, and workload issues.

3 Regarding the audit categories, staff recommends
4 a broader audit approach to cover all significant fiscal
5 processes. This expansion of the audit categories will
6 ensure that the audit program is comprehensive and will
7 provide the Board the most assurance of its program and
8 fiscal process.

9 Conversely, the expansion will have an impact on
10 the audit rate, which staff believes is a highly accepted
11 trade-off.

12 Regarding the targeted audit rate, staff
13 contacted other State agencies to determine the percentage
14 of common audit activity such as grants and found it
15 ranges from zero to twelve percent. Additionally, we
16 contacted the Department of Finance and they suggested an
17 audit rate of five to ten percent. Subsequently, the
18 proposed target rates for the Board's fiscal processes are
19 deemed reasonable, practical, and prudent.

20 Regarding the workload issues, the proposal to
21 almost double the audit categories is not without
22 causality. Thus, it became apparent that increasing to a
23 30 percent annual audit rate would not be feasible with
24 existing resources, specifically staff and contracted
25 services.

1 Furthermore, the first annual target last year
2 which was to achieve a five percent annual audit rate was
3 not achieved. Again, as you may recall from last month's
4 update, the audit unit was not fully staffed until April
5 2008.

6 In the final analysis, about a three percent
7 audit rate was obtained as of December 31st, 2007, 19
8 grant audits and four oil fee payer audits were completed
9 for calendar year 2007. But relax, Tom did not send me
10 here to ask for additional staffing. At this time,
11 neither augmenting staff nor increasing contract services
12 are suggested. Instead, giving the infancy of the audit
13 unit and the first time audit for some of the audit
14 categories, staff recommends allowing the proposed audit
15 plan to roll out. And as with all processes, after
16 continuous monitoring, we will conduct an annual
17 re-evaluation for additional resources or adjustments
18 needed.

19 Now for the presentation.

20 (Thereupon an overhead presentation was
21 presented as follows.)

22 --o0o--

23 AUDITS SUPERVISOR MENDOZA: Strategic Directive
24 10.1 currently reads, "Ensure the fiscal integrity of all
25 contracts, reimbursements and appropriate protection of

1 CIWMB funds." Staff recommends revision to 10.1 to read,
2 "Ensure the fiscal integrity and appropriate protection of
3 CIWMB funds for the contract grants, loans, oil fee
4 payers, covered electronic waste recovery and recycling
5 claims, and reimbursements."

6 CIWMB has the fiduciary responsibility to manage
7 all funds in accordance with State procedures which is
8 accomplished in two ways. Number one effective management
9 of our fiscal processes such as grants, contracts, and
10 e-waste claims. And two, a comprehensive audit program to
11 assure CIWMB is meeting its fiduciary responsibility goal,
12 we need to expand our audit coverage by including these
13 additional significant categories.

14 Next, Strategic Directive 10.1 reads, "Conduct
15 regular audit of CIWMB fiscal processes." To meet the
16 intent of this goal, our plan is to use the financial
17 integrity of State Managers Act, also known as FSMA, which
18 is required every two years.

19 Current or previously the Department of Finance
20 did CIWMB FSMA audit. However, with DOS departure from
21 conducting FSMA's, this task will now fall upon the audit
22 unit.

23 Our approach would be to alternate biannually the
24 modified FSMA that is being recommended by the Department
25 of Finance and the full fledged eleven cycles.

1 --o0o--

2 AUDITS SUPERVISOR MENDOZA: Consequently, every
3 other FSMA will be a full, rigorous, exam and will provide
4 the Board maximum assurance of the effective and efficient
5 internal controls within CIWMB.

6 --o0o--

7 AUDITS SUPERVISOR MENDOZA: Next, Strategic
8 Directive 10.3 reads, "Audit five percent of loans,
9 grants, and contracts in 2007 and then increase thereafter
10 to the point of 30 percent are audited annually."

11 Staff recommends revision to Strategic Directive
12 10.3 to read, "Audit a minimum of five percent of loans,
13 eight percent of grants, five percent of contracts, 16
14 percent of oil fee payers, and 9 percent of covered
15 electronic waste recovery and recycling claims in fiscal
16 year 2008/09 and increase thereafter annually to an
17 overall 17 percent audit rate."

18 Developing an implementation strategy for meeting
19 the intent of the sub directive includes identification of
20 a methodology for determining the population and sample
21 size for each category.

22 The methodology used was to achieve an attribute
23 which best measured the population of each audit category.
24 Although the audit rate is less than originally envisioned
25 for Strategic Directive 10, the audit coverage more than

1 compensates for this trade off. And a 17 percent overall
2 audit rate is still more vigorous in comparison to other
3 departments and boards that I'm aware of.

4 --o0o--

5 AUDITS SUPERVISOR MENDOZA: This slide summarizes
6 the sample size and percentage of the total audit
7 category's population. I'd like to draw your attention to
8 the right column for averages for the first target year
9 fiscal year 08/09 across-the-board average was eight
10 percent, eventually going to target year four, fiscal year
11 2011/12, to achieve our 17 percent across the Board.

12 Next, there are no changes from last month's
13 update for Strategic Directive 10.4.

14 Finally, Strategic Directive 10.5 reads, "Require
15 self audit of all grant programs to be conducted by
16 grantee at the conclusion of grant. System to be in place
17 by the end of 2007."

18 Staff recommends revision to Strategic Directive
19 10.5 to read, "Requires self assessment of all grant
20 programs to be conducted by the grantee at the conclusion
21 of each grant. Systems to be in place beginning fiscal
22 year 2008/09."

23 Since an actual audit may be cost prohibitive to
24 most grantees, staff proposes an audit assessment as an
25 alternative to the audit. A select group from legal,

1 program, and admin has developed a grant self-assessment
2 check list as a tool for the grantee, the grant managers,
3 and the auditors. The audit staff will track the
4 grantee's compliance with the self-assessment provisions
5 as well as obtain feedback from the grantee and the audit
6 staff to determine the effectiveness and the value of the
7 self-assessment tool. Based on the Board's approval of
8 this revision, the self-assessment is really to be
9 incorporated into all grant agreements effective July,
10 2008.

11 In regards to providing training to the grantees,
12 staff proposes that training also be provided to grant
13 managers. The training schedule will be coordinated with
14 and provided at the direction of grant program management
15 since they have a better pulse of the grant community and
16 knowledge of the dates that will maximize attendants.

17 Staff recommends that you accept and approve
18 Resolution 2008-76. At this time I will accept any
19 questions you may have.

20 CHAIRPERSON BROWN: Anybody have any questions?

21 Were there some changes to 10.2 that I didn't
22 see? Because you talked about the change in DOF policy on
23 FSMA and everything, but there is no changes in language
24 in the item.

25 DEPUTY DIRECTOR ESTES: No.

1 CHAIRPERSON BROWN: No language changes on that.

2 And then my other question is related to 10.5.

3 It says require a self-assessment. I see the check list

4 in here. But don't they already doing that? Aren't we

5 requiring them to do something they're already doing

6 anyway?

7 AUDITS SUPERVISOR MENDOZA: To my knowledge they

8 are not doing a self-assessment.

9 CHAIRPERSON BROWN: I mean, they need to provide

10 a lot this information to be reimbursed; right?

11 AUDITS SUPERVISOR MENDOZA: They are doing annual

12 reports.

13 DIVISION CHIEF WILD-WAGNER: Good afternoon,

14 Madam Chair. Shirley Willd-Wagner with the Financial

15 Assistance Division.

16 Grantees do follow -- these are basically the

17 requirements that are already in the procedures and

18 requirements and terms and conditions. I don't think

19 there's anything in there that is surprising. It's more

20 or less a guide to the grantees and then to the audit

21 staff as they look through making sure they're doing the

22 I's and crossing the T's and following all the

23 requirements. And I would submit that along with the

24 annual report where we talk about the qualitative part of

25 their grant implementation or they've achieved their goals

1 and objectives.

2 CHAIRPERSON BROWN: Should it say specifically
3 it's either the grant self-assessment checklist that
4 they're required to fill out or some sort of an audit in
5 that item, rather than just say they're required to do a
6 self-assessment of the grant program?

7 DEPUTY DIRECTOR ESTES: That would be fine. Give
8 them the option.

9 CHAIRPERSON NICHOLS: No. I think you need to
10 change it say -- right now it's very ambiguous to me. I
11 looked at and it said, well, I would do any kind of a
12 self-assessment I want. And you're providing a checklist
13 specifically you want them to fill out. Either put the
14 grant self-assessment checklist in the directive or define
15 it as an audit self-assessment so it's differentiated from
16 the annual report they do on program assessment.

17 DEPUTY DIRECTOR ESTES: We can do that.

18 CHAIRPERSON BROWN: I think that's the only thing
19 that I have.

20 Cheryl, did you have something?

21 COMMITTEE MEMBER PEACE: In terms of the
22 self-assessment, we've never required that before? This
23 is something new?

24 And I'm just wondering, have we heard from any of
25 the grantees that they think this might be too burdensome

1 or anything like that?

2 I'm just wondering why we think this is
3 important. And you can explain to me if we've never done
4 it before why we think it's important to streamline and
5 make things easier for our grantees and now we're going
6 require this.

7 BRANCH MANAGER WILLD-WAGNER: This has not been
8 rolled out to the grantees. Many of them have seen the
9 agenda items. And I imagine that we will hear from
10 grantees it's an additional burden.

11 Basically, as I said, they're having to follow
12 all those checklists anyway. But this is in response to a
13 specific strategic directive that was created the Board.

14 CHAIRPERSON BROWN: As you recall during the
15 strategic planning process, we wanted to ensure fiscal
16 responsibility and ensure that the grant funds are being
17 spent appropriately. So we asked for a self audit. This
18 tool is staff's attempt to make it easier to streamline
19 for the grantee rather than doing an audit.

20 COMMITTEE MEMBER PEACE: It's too expensive, so
21 we're going do this. But I'm just wondering because this
22 was something in response to what we asked for, should we
23 have been asking for that? That's all I'm asking. Maybe
24 we're asking for too much. They're doing things like they
25 mentioned they're already going through the grant and

1 checking off things they have to do. Is this something
2 we're adding to it and aren't going to really get that
3 much more value out of it. That's all I'm asking.

4 BRANCH MANAGER WILLD-WAGNER: One thing I noted
5 in re-reading the item this morning is that the staff had
6 said that they would do an assessment, take some regular
7 input from the grantees to then look at the value and
8 effectiveness of this particular tool. And I believe we
9 report back to you annually on the strategic directive
10 implementation. So that feedback from grantees is built
11 into the plan.

12 COMMITTEE MEMBER PEACE: So you'd like to do this
13 for a year and then come back to us and say this is
14 working or not working.

15 CHAIRPERSON BROWN: We're giving them money. I
16 mean, I understand what you're trying to do. But we're
17 trying to ensure that the money that these jurisdictions
18 are getting is being spent the way it's intended to spent.
19 It's a three-page checklist. It's not like we're
20 requiring them to go out and do anything extra like find
21 an auditor to do anything. It's verifying that the funds
22 are being spent appropriately.

23 COMMITTEE MEMBER CHESBRO: Most grant applicants
24 include the cost of evaluation. And if it's required,
25 then you include the cost in the grant application.

1 My only concern would be the very smallest
2 itty-bitty non-profit or Sierra County or someone who's
3 staff is just so non-existent. Is whether or not we're --

4 COMMITTEE MEMBER PEACE: That's what we hear is
5 the staff person in charge of the grant wearing so many
6 hats. On the one hand, we're trying to do everything we
7 can to streamline the grant application and everything to
8 do with the grant and then at the end we're going to put
9 on this kind of burden.

10 I'm wondering if this is something that's
11 necessary. If we really think it's something that's
12 necessary, we're going to get that much more value out of
13 it, yes. But if it's questionable about whether we're
14 going to get that much added value out of it, maybe we
15 shouldn't be doing it.

16 COMMITTEE MEMBER MULÉ: Well, I think it is
17 necessary. I think if anybody is applying for funds from
18 the State that they would take on this responsibility of
19 ensuring those funds are spent appropriately. And this is
20 one way for us to ensure that those funds are expended
21 appropriately. So I think this is the least that we could
22 do.

23 And I know that a lot of nonprofits and
24 jurisdictions are stretched for staff. But again, if you
25 want the money, you need to take on the responsibility

1 that goes with it.

2 It's, as Chair Brown said, it's just a three-page
3 checklist. But it helps us ensure that the moneys are
4 being spent appropriately.

5 COMMITTEE MEMBER PEACE: Well, it just looks like
6 a three-page checklist. But when you start looking at the
7 questions, there's a lot that has to go into finding the
8 answers before you check the box. I'm just saying if
9 they're going through exercises as they go through the
10 grant anyway, I'm just wondering -- I was just asking how
11 much extra value is this adding.

12 AUDITS SUPERVISOR MENDOZA: I think I can add
13 some light to that, Member Peace.

14 As you said, Chair Brown, you are correct. This
15 is in response to the Board's initial direction for an
16 audit. The alternative was to do a self-assessment in
17 comparison to an audit that some of the DOF's audits are
18 in the range of \$8,000.

19 COMMITTEE MEMBER PEACE: We understood that.

20 AUDITS SUPERVISOR MENDOZA: And Member Peace, the
21 reason for this roll-out would be initially to go out in
22 July of 2008 and they would be completed at the end of the
23 grant period. So we wouldn't be getting the responses
24 back for at least a year out. And then there would be an
25 evaluation at that time.

1 And hopefully our belief is that we can retain
2 and get some audit value off of these and target some of
3 these jurisdictions for future audits based on their
4 responses. None of these questions are new. They're all
5 based on the procedures and requirements or the terms and
6 conditions. And nothing other than what they have been
7 doing.

8 COMMITTEE MEMBER PEACE: So it should be fairly
9 easy for them.

10 AUDITS SUPERVISOR MENDOZA: That is our belief.

11 SENIOR STAFF COUNSEL: Excuse me, Madam Chair and
12 Board members. Marie Carter, Senior Staff Counsel.

13 I just wanted to alert you to the fact that we
14 are asking in this checklist for the grantees to review
15 this at the beginning of the grant period, because that
16 allows them to recognize those areas that are important to
17 us that they're going to be held accountable for.

18 And we felt the additional requirement of the
19 signing under penalty of perjury would put them on notice
20 this is a serious document. Granted, it pretty much
21 follows what they are required to do in their grant
22 agreement. But it reminds them these terms in the grant
23 agreement have a certain purpose. And part of that
24 purpose is what you're seeking through this Strategic
25 Directive 10, the fiscal accountability on all parties.

1 COMMITTEE MEMBER MULÉ: Thank you.

2 CHAIRPERSON BROWN: Thank you.

3 COMMITTEE MEMBER PEACE: Could you tell me on the
4 oil fee how did you get to 16 percent? How is that
5 calculated?

6 AUDITS SUPERVISOR MENDOZA: Member Peace, there
7 is approximately 133 oil fee payers --

8 COMMITTEE MEMBER PEACE: It says 136 in the item.

9 AUDITS SUPERVISOR MENDOZA: 136 fee payers that
10 are submitting returns to the Board. Of those, 12 are
11 above the medium. And the medium is approximately
12 \$36,000.

13 So reviewing or auditing four, two from above the
14 medium or average and two from below, it equates
15 monetarily to about 16 percent of the total returns.

16 COMMITTEE MEMBER PEACE: So monetarily. It
17 doesn't equate to the number of oil payers.

18 AUDITS SUPERVISOR MENDOZA: No. Quantity is
19 four. Monetarily is 16. Correct.

20 COMMITTEE MEMBER PEACE: And then I guess I have
21 a concern -- I don't know if this is in response to what
22 the Board said. Originally we said we wanted like 30
23 percent of these things audit. And now you're ratcheting
24 down to 17.

25 But I guess I'm wondering if that is still maybe

1 unreasonable seeing that the Department of Finance has
2 five to ten percent is what is a prudent number to do.
3 Are we going above and beyond what needs to be done when
4 the Department of Finance is paying five to ten percent is
5 adequate, that maybe we're going too far.

6 DEPUTY DIRECTOR ESTES: Well, I think clearly we
7 could have gotten away with a smaller number. But we look
8 a look at our existing resources. We did beef up this
9 unit in the last budget cycle.

10 And I was saying similar things to George, let's
11 do something we think we can attain. He wanted to go for
12 the stretch goal. So given our sort of performance
13 process, we're going to evaluate and see how we go along
14 the way.

15 But we believe at this point that if we were
16 fully staffed, we could achieve this. Now that's a big if
17 lately. But, you know, we can adjust. But we think it's
18 doable. So it probably is a little bit more than
19 necessary, but it's not excessive.

20 COMMITTEE MEMBER PEACE: And then when it comes
21 to the amounts, the percentages that you're going to do
22 for each category, I'm just wondering from what I've heard
23 it sounded like the e-waste ones were the ones that maybe
24 had the most problems, the ones that maybe we needed to
25 focus on the most.

1 So I'm just wondering instead of kind of doing it
2 this way, that maybe e-waste, we should focus more on the
3 e-waste, maybe not so much on the ones that seem to have a
4 problem and leave those in the five to ten percent range,
5 and maybe ratchet up the e-waste ones that seem to be the
6 big problem.

7 DEPUTY DIRECTOR ESTES: That's possible. I'll
8 let George explain the rationale for why e-waste is getting
9 the most attention in total number of audits.

10 AUDITS SUPERVISOR MENDOZA: Member Peace, sort of
11 limited on resources. We have six associate auditors that
12 actually conduct these audits. The initial instructions
13 or Strategic Directive did not entail reviewing e-waste.
14 That was an add-on after the fact.

15 And initially our thought was to apply two
16 full-time auditors to e-waste. And like you state, we
17 also have had re-look at it and determine that monetarily
18 it required more review. So we're going for approximately
19 3.6 auditors to review e-waste out of six total.

20 COMMITTEE MEMBER PEACE: So you already have half
21 of our auditors on e-waste?

22 AUDITS SUPERVISOR MENDOZA: Right.

23 COMMITTEE MEMBER PEACE: So if you look down at
24 say your 2011 and '12 where you're doing 16 percent of the
25 loans and 17 percent, I'm just wondering should we only be

1 doing between 5 and 10 percent of the loans like DOF says
2 and 5 percent of the grants and 5 to 10 percent of the
3 contracts and maybe 30 percent of e-waste. I mean, I'm
4 just asking. Is that --

5 CHAIRPERSON BROWN: But is DOF recommending or is
6 that what DOF does? Is DOF recommending we only do 5
7 percent, or is that what they do as a practice?

8 AUDITS SUPERVISOR MENDOZA: I'm not sure what
9 they do.

10 CHAIRPERSON BROWN: Could theirs be attributed to
11 their limited resources as well and the size of their
12 audits and what they actually do as far as full audits?
13 This is an assessment tool.

14 AUDITS SUPERVISOR MENDOZA: That was their
15 suggestion, 5 to 10 percent coverage would be sufficient.

16 DEPUTY DIRECTOR ESTES: There aren't any hard,
17 fast guidelines. It's an organization's own tolerance for
18 risk.

19 COMMITTEE MEMBER MULÉ: Madam Chair, that was
20 what I was going to suggest. We have an expert that we
21 brought on to do this. So I think that we should let them
22 do their jobs as they're recommending to us. Bring back
23 their results and then we can always evaluate and adjust
24 the audit percentages when appropriate. Thank you.

25 CHAIRPERSON BROWN: I assume, Larry, you're

1 standing there to speak to the item. Larry Sweetser.

2 MR. SWEETSER: Larry Sweetser on behalf of the
3 rural counties ES JPA. I do apologize. I didn't focus on
4 this item with all the others on the agenda. I'll go out
5 on a limb.

6 CHAIRPERSON BROWN: We had to. Focus on every
7 item.

8 MR. SWEETSER: To address Member Peace's concern,
9 it is quite scary to look at three pages of another
10 checklist and sign off on. I briefly looked at the
11 questions. They don't seem that unreasonable. And they
12 seem pretty easy enough, even for some of our smaller
13 counties to go through, particularly if Board staff helps
14 with education.

15 I can easily go to a number of our counties and
16 get feedback and report back before the Board meeting if
17 you would like.

18 Going out on a limb, I don't think this is
19 unreasonable given the Board's need to make sure the money
20 is well spent. So maybe we can nitpick some questions or
21 maybe have some stakeholders provide some input, but I
22 don't think we wouldn't oppose the direction of the item.

23 COMMITTEE MEMBER PEACE: Thank you, Larry. I
24 appreciate that.

25 CHAIRPERSON BROWN: Thank you.

1 Any other questions? Any motion?

2 COMMITTEE MEMBER MULÉ: Madam Chair, I'd like to
3 move Resolution 2008-76 with the change that you
4 recommended in the language for 10.5.

5 CHAIRPERSON BROWN: Which would just substitute
6 self-assessment for what staff is calling -- the grant
7 self-assessment checklist will be substituted where it
8 says self-assessment in the resolution.

9 COMMITTEE MEMBER PETERSEN: I'll second that.

10 CHAIRPERSON BROWN: It's been moved by Member
11 Mulé, seconded by Member Petersen.

12 Kristen, can you call the roll?

13 EXECUTIVE ASSISTANT GARNER: Chesbro?

14 COMMITTEE MEMBER CHESBRO: Aye.

15 EXECUTIVE ASSISTANT GARNER: Mulé?

16 COMMITTEE MEMBER MULÉ: Aye.

17 EXECUTIVE ASSISTANT GARNER: Peace?

18 COMMITTEE MEMBER PEACE: Aye.

19 EXECUTIVE ASSISTANT GARNER: Petersen?

20 COMMITTEE MEMBER PETERSEN: Aye.

21 EXECUTIVE ASSISTANT GARNER: Brown?

22 CHAIRPERSON BROWN: Aye.

23 Thank you. George, thank you very much for all
24 of that. And Tom, of course.

25 We're not coming back at 1:00. We're going the

1 take a break for lunch. And we have F, G, and H, after
2 lunch. So if we could come back 1:30, promptly at 1:30,
3 to begin so that we can get through these items. We
4 should be able to finish by 3:00, I hope. That's my goal.

5 (Thereupon a lunch recess was taken.)

6 CHAIRPERSON BROWN: We promised to start at 1:30,
7 because we have an aggressive agenda if we're going to
8 target by 3:00 if we can.

9 The first up is the consideration of allocation
10 proposals to be funded from the IWMA account, Item 14.

11 EXECUTIVE DIRECTOR LEARY: Margo, that's mine.

12 CHAIRPERSON BROWN: Hi there.

13 EXECUTIVE DIRECTOR LEARY: Let me introduce
14 myself.

15 CHAIRPERSON BROWN: Go ahead. Who are you?

16 EXECUTIVE DIRECTOR LEARY: I don't get too speak
17 much at these things. Let me talk on this one.

18 Agenda Item 14 is consideration of allocation
19 proposals to be funded from the Integrated Waste
20 Management Account for FY 8/9.

21 Madam Chair, members, there was a couple things
22 that I really like about this agenda item. For the first
23 time since I've been Executive Director, we've been able
24 to offer for your consideration some allocation proposals
25 in advance of the budget year, which I think is a great

1 improvement in the sense that it gives the Board and our
2 potential contractors full use of the money for the full
3 three years.

4 We've tended the struggle with these over the
5 past and not be quite as timely as we are trying to be
6 this year. And I compliment Tom and all the executive
7 team for pulling these ideas together in advance of the
8 fiscal year so we have them for your consideration.
9 Doesn't necessarily speak to the substance of the
10 allocation proposals, but we at least have the process
11 started.

12 With your blessing, if that were to occur this
13 month, we then could go through the RFP contractor
14 selection process even in advance of the signing of the
15 budget, such that when the budget was signed, we could
16 commit to the money right away. Assuming we get the Scope
17 of Work written and the right contractor selected. But
18 anyway, I'm happy to start the process early this year.

19 The other reason I'm excited about this agenda
20 item is we don't typically seek allocation proposals out
21 of the regulatory side of our program. And these two both
22 speak to that. In fact, they also address one of my
23 favorite Strategic Directives, which is 8.4, which asks us
24 to conduct sufficient review and revision to ensure Waste
25 Board's regulations are grounded in the best available

1 science, address changing market conditions, and take
2 advantage of developing technologies.

3 Both of the allocation proposals suggested to you
4 in D1 and D2 speak to that Strategic Directive on point.
5 We offer to you the review and evaluation of a three-part
6 test as well as the technologies and management practices
7 for minimizing long-term postclosure maintenance costs.

8 So I think I'll turn it over to Ted and Bill and
9 I think Mark de Bie will be here shortly to answer any
10 questions. We'll make short presentations on the
11 allocation proposals.

12 PROGRAM DIRECTOR RAUH: Thank you, Mark. I'll
13 quickly start with a three-point task. Basically, it is
14 in response as Mark has said to 8.4. Our intention here
15 is to look across the United States and see how other
16 states are regulating these same kinds of facilities. And
17 what kinds of management practices they're utilizing to
18 ensure the safe handling and management of these waste
19 streams so we can bring that information back to
20 California.

21 We also want to the contractor to take a look at
22 how California facilities are managing these wastes and
23 where are the break points within their activities, how
24 are they ensuring the safe handling as well so that
25 ultimately when we come back with a regulatory proposal

1 we'll have it grounded in the best practice and best
2 management practices as well as we look other scientific
3 approaches to dealing with the same issues. So that's the
4 intention of this item.

5 CHAIRPERSON BROWN: Okay. Before you start,
6 Bill, let me mention or note for the record that all
7 members are present when we re-convened the afternoon
8 session.

9 In lieu of calling the roll, we'll move directly
10 to Bill.

11 DIVISION CHIEF ORR: My name is Bill Orr. I'm
12 the Division Chief of the Cleanup, Closure, and Financial
13 Assurance Division.

14 In regard to the second contract concept,
15 basically what this is as you'll hear in the next agenda
16 item as long as we are dependant on dry tomb landfills, we
17 will continue to accumulate a long-term financial
18 assurance obligation for the foreseeable future.

19 The notion behind this contract concept is to
20 look for ways to short circuit that process. And it would
21 be at all levels. It would be looking at specific
22 technologies that would be applied at a landfill. It
23 would be looking at various waste management strategies
24 that could be employed at a landfill. And it would also
25 look at various alternatives to conventional landfilling.

1 So looking at the micro, middle, and macro levels.

2 And it would be very similar to a contract that
3 the Board just recently completed on landfill gas best
4 management practices. But this one was focusing on ways
5 to reduce or eliminate or minimize long-term financial
6 assurance costs.

7 CHAIRPERSON BROWN: Would that include tools or
8 information on how to demonstrate -- will this study look
9 at those mechanisms to demonstrate it no longer poses a
10 threat?

11 DIVISION CHIEF ORR: Yes. It would include that
12 as both a way to optimize or minimize a cost for a given
13 landfill and to detect earlier when a landfill may no
14 longer pose a threat and could be released from
15 postclosure maintenance. So it would be looking at those
16 kinds of technologies as part of the project.

17 CHAIRPERSON BROWN: Okay.

18 COMMITTEE MEMBER MULÉ: These are both great
19 concepts. And I want to thank you for putting them forth.
20 Like you said, 8.4 is one of my favorite strategic
21 directives as well. Good policy comes from good science.
22 So I think these two studies were very important in
23 helping us move forward with our policies on these two
24 issues.

25 CHAIRPERSON BROWN: Do you want to quickly since

1 I see Mark is not here go through D1?

2 PROGRAM DIRECTOR RAUH: Actually, I did just
3 before the other members joined.

4 CHAIRPERSON BROWN: It's mostly research based.

5 PROGRAM DIRECTOR RAUH: It's the same type of
6 approach only looking at the three-part test.

7 CHAIRPERSON BROWN: Will it include other
8 scientific information to look at the three-part test as
9 relative to biosolid issues and what we regulate in the
10 conversion technology arena?

11 PROGRAM DIRECTOR RAUH: Our intention is to look
12 at how these waste streams and this issue is addressed
13 across the United States. So we'll be looking at a host
14 of different options on how to do it.

15 CHAIRPERSON BROWN: Any other questions from any
16 members? Okay.

17 Great. Can I have a motion?

18 COMMITTEE MEMBER MULÉ: Madam Chair, I'd like to
19 move Resolution 2008-115.

20 CHAIRPERSON BROWN: How about 114 and 115? Can
21 we move them together?

22 COMMITTEE MEMBER MULÉ: Then 114 and 115.

23 COMMITTEE MEMBER PETERSEN: I'll second both of
24 them.

25 CHAIRPERSON BROWN: It's been moved by Member

1 Mulé and seconded by Member Petersen.

2 Kristen, can you call the roll?

3 EXECUTIVE ASSISTANT GARNER: Chesbro?

4 COMMITTEE MEMBER CHESBRO: Aye.

5 EXECUTIVE ASSISTANT GARNER: Mulé?

6 COMMITTEE MEMBER MULÉ: Aye.

7 EXECUTIVE ASSISTANT GARNER: Peace?

8 COMMITTEE MEMBER PEACE: Aye.

9 EXECUTIVE ASSISTANT GARNER: Petersen?

10 COMMITTEE MEMBER PETERSEN: Aye.

11 EXECUTIVE ASSISTANT GARNER: Brown?

12 CHAIRPERSON BROWN: Aye.

13 That goes on fiscal consent.

14 And thank you very, very much. Mark, thank you.

15 It's nice to see prospectively what we're doing.

16 And now I guess we'll move quickly to Item G,

17 which is the long-term postclosure maintenance and

18 corrective action financial assurance.

19 PROGRAM DIRECTOR RAUH: Thank you, Madam Chair

20 and Board members.

21 I just have a couple of introductory remarks.

22 Staff is before you today seeking direction regarding the

23 proposed Phase 2 rulemaking effort necessitated by

24 legislative direction by AB 2296.

25 This legislation in part calls for the Board to

1 conduct a study of landfill financial assurance needs for
2 postclosure costs, promulgate regulations the Board feels
3 necessary to carry out findings from the study, and
4 recommend possible legislative initiatives to address any
5 issues that cannot be dealt with through the Board's
6 current authority.

7 The issues before the Board today are complex and
8 require thoughtful consideration because of the long-term
9 impacts that can result from them. The financial impact
10 to the state if landfill operator/owners default on their
11 obligations to maintain closed landfills may be
12 significant. And action to extend financial assurance
13 past the current 30 years the guard against defaults will
14 also effect owner/operator use of capital.

15 While AB 2296 establishes an adoption date of
16 July 2009 for the Phase 2 regulations, staff believes the
17 issue you are weighing should not be rushed. If extra
18 time is needed now to fully vet the issues before you
19 provide direction to staff, then that is time well spent.

20 We are proposing to come back to the Board in
21 August with proposed regulations to start the formal
22 rulemaking process once you provide us direction.
23 Beginning the regulatory process in August provides a very
24 short time frame to complete the regulations by the July
25 2009 deadline. We hope that the staff presentation that

1 Bill will be making today will provide you with a
2 comprehensive starting point you need to evaluate the
3 options.

4 As we just mentioned on the previous item, the
5 current dry tomb landfill design that is in use by the 282
6 landfills effected by AB 2296 creates the need for
7 long-term postclosure maintenance. A central issue posed
8 by dry tomb landfills is as long as they are kept dry and
9 maintained, the waste within them is controlled and
10 lessens the health and environmental threat. However,
11 there is no current evidences or experience that indicates
12 the risk that they pose diminishes with time. If water
13 re-enters the waste cells or if other maintenance is not
14 performed, the threat is still there.

15 Mitigation of this long-term risk seems to best
16 be resolved by moving away from dry tomb designs and
17 looking at creative ways to convert existing waste to more
18 beneficial use. Until these changes are made, however,
19 the State has 282 landfills that are the subject of this
20 briefing, and these landfills pose a long-term financial
21 risk to the state to ensure they remain managed
22 appropriately.

23 The long-term financial risk requires the Board
24 to address the issues of the long-term maintenance and
25 unplanned releases, such as landfill gas migration or

1 events that might occur on the site such as earthquakes
2 that cause substantial damage to landfill systems.

3 Fortunately, unplanned releases that involved
4 water quality issues are already provided for in
5 corrective action financial assurances for landfills
6 unless the Regional Water Quality Control Boards determine
7 that no potential water quality risk exists. These
8 financial assurances are required to be kept in place as
9 long as the waste poses a threat.

10 Consideration of expanding corrective action
11 financial assurances to deal with non-water unplanned
12 events will be discussed in the staff's presentation.

13 With regard to long-term maintenance fund
14 assurance, the current system provides 30 years of
15 postclosure maintenance financial assurance funding.
16 Current practice allows for landfill operator/owners to
17 fully expend these funds by the end of the 30 years
18 following closure. The landfill operator/owner is
19 responsible for maintenance beyond this point.

20 The factors staff will present to the Board for
21 your consideration include projected amount of forfeiture.
22 That is where a landfill owner/operator doesn't have the
23 ability to pay for maintenance, the State's monetary risk
24 posed by forfeiture projections, possible models of
25 continuation of financial assurance past 30 years, which

1 the Board has authority to impose, and the amount of funds
2 tied up in financial assurances resulting from
3 implementation of these various approaches.

4 Staff will also suggest ways that landfill
5 operator/owners can be encouraged to reduce the long-term
6 risk from landfills.

7 Today's presentation will start with AB 2296
8 Board requirements. Staff will present technical
9 information that has been developed through the contractor
10 report that was received in December, independent staff
11 analysis that's been conducted since that time, and
12 stakeholder input that characterizes the State's current
13 regulatory and landfill situation, what postclosure
14 maintenance costs might be, and estimates of the long-term
15 costs and risks from default the State may face.

16 Staff will present options the Board may consider
17 to address the long-term postclosure maintenance risk from
18 default and expansion of corrective action to deal with
19 unplanned events using its current statutory authority.

20 Staff will also present suggested areas for
21 regulatory consideration that improve the State's
22 financial assurance mechanisms and programs that are
23 consistent with prior Board direction and the AB 2296
24 requirements.

25 I want to thank the members of the AB 2296

1 consulting group that have worked very hard with staff
2 over the past month to continue in the dialogue and
3 provide excellent ideas and technical support to our
4 effort.

5 Bill Orr has managed the staff including Richard
6 Castle, Bernie Vlach, Garth Adams, Mike Wochnick, Shelly
7 Bromberg, Andy Moreno, and JoAnne Byrne and also Elizabeth
8 Castañeda. In addition, I want to thank Ed Wasca and
9 Leslie Graves from the State Water Board who have been an
10 integral part of our team on this effort. And also I'd
11 like to thank Rubia Packard and Rachel Davis, Board Member
12 Mulé's former advisor, who also played a major role.

13 COMMITTEE MEMBER MULÉ: I'm sure she's listening
14 in.

15 PROGRAM DIRECTOR RAUH: With that, I'd like to
16 turn it over to Bill Orr to start the staff's
17 presentation.

18 (Thereupon an overhead presentation was
19 presented as follows.)

20 DIVISION CHIEF ORR: Thanks, Ted.

21 --o0o--

22 DIVISION CHIEF ORR: As Ted indicated, I'm going
23 to start off by briefly reviewing the statutory
24 requirements of AB 2296. It called for the Board to adopt
25 regulations that address a reasonable contingency for

1 postclosure maintenance. Also to basically clarify that
2 the costs that are considered are the ones that the State
3 would be faced with, including labor code and longer lived
4 items.

5 --o0o--

6 DIVISION CHIEF ORR: In addition, last January,
7 the Board was to complete a study which was done to look
8 at technologies and controls to mitigate potential threats
9 from landfills and also to take a look at various
10 financial mechanisms that would protect the State both
11 from long-term postclosure maintenance and corrective
12 action costs.

13 --o0o--

14 DIVISION CHIEF ORR: The current requirement on
15 the Board is to by July 1st of 2009 to adopt regulations
16 and develop recommendations for needed legislation to
17 implement the findings of the study that was completed
18 last December.

19 Next.

20 --o0o--

21 DIVISION CHIEF ORR: And then finally AB 2296
22 requires that the Board consult with various stakeholders.
23 And as Ted indicated, we conveyed 2296 consulting group.

24 Next.

25 --o0o--

1 DIVISION CHIEF ORR: The Board adopted
2 regulations that completed the Phase I requirement last
3 December. They were approved by the Office of
4 Administrative Law, and they went into effect in February.

5 --o0o--

6 DIVISION CHIEF ORR: In addition, the Board gave
7 the direction for a variety -- next.

8 --o0o--

9 DIVISION CHIEF ORR: A variety of activities,
10 some of which were things we could continue to develop
11 administratively, including a fund-as-you-fill permit
12 option for landfills. Also working with the State and
13 Regional Water Boards to improve the compliance rate for
14 the water quality corrective action financial assurance.

15 Next.

16 --o0o--

17 DIVISION CHIEF ORR: In addition, looking toward
18 the second phase of the rulemaking, there were several
19 issues that were deferred from the first phase, including
20 a contingency on postclosure maintenance, the submittal of
21 as-built costs, and insurance requirements. In addition,
22 the study recommended refinements to the pledge of revenue
23 mechanism and made a number of suggestions in terms of the
24 long-term financial assurances and non-water corrective
25 actions which will be focusing on today.

1 Next.

2 --o0o--

3 DIVISION CHIEF ORR: And then finally there were
4 a couple of items that the Board directed us to consider,
5 continue to work on. One was the pooled fund. And the
6 second was uses for the risk scoring model that was
7 developed by the contractor.

8 Next.

9 --o0o--

10 DIVISION CHIEF ORR: There were two items that
11 the Board directed us not to pursue further. One was
12 annuities and guaranteed investment contracts for
13 long-term financial assurance demonstrations and umbrella
14 insurance. And then finally not to revert to the Subtitle
15 D period that is the subject of federal regulations.

16 Next.

17 --o0o--

18 DIVISION CHIEF ORR: So that brings us to the
19 focus that we've had over the last six months. And over
20 the last six months, staff in approaching their work has
21 taken a long-term view in how to look at the issue of
22 long-term financial assurances and corrective action.

23 Extensive effort has been put into improving and
24 refining the working model that was developed by the
25 contractor.

1 We've also done a lot to utilize sound science
2 and the best available information that we could find.

3 We collected postclosure maintenance standards
4 and reduction release information from our counterparts
5 around the country.

6 We've started a postclosure maintenance cost
7 trend survey.

8 And we've completed a corrective action survey of
9 the 282 landfills in the state.

10 Next.

11 --o0o--

12 DIVISION CHIEF ORR: This is the basic time line
13 we're operating under. We basically are looking to
14 position the Board to meet the deadline. We do have some
15 flexibility, a month or two. But there are some vagaries
16 in terms of how long it's actually going to take to get
17 the rulemaking notice approved through the Air Resources
18 Board, Cal/EPA, Finance, and ultimately OAL to be noticed.
19 So we do have a month or two flexibility given our current
20 schedule.

21 Next.

22 --o0o--

23 DIVISION CHIEF ORR: But we are at a critical
24 juncture. And basically we're at a place where in order
25 to begin to develop rulemaking language to proceed, we

1 need to bring a series of options and questions to the
2 Board for consideration and direction.

3 So for the rest of the agenda item, what I plan
4 to do is to give some additional context regarding the
5 landfill system and landfill system costs, to cover a
6 variety of things that may be included in the Phase 2
7 rulemaking in terms of postclosure maintenance, corrective
8 action, and some other outstanding issues. To bring a
9 couple of items back to the Board's attention, to seek
10 direction to continue to develop those items. And
11 finally, there were a couple items that staff would
12 suggest not pursuing further at this time.

13 --oOo--

14 DIVISION CHIEF ORR: This is a pie chart that
15 basically shows the 282 landfills. I think the most
16 important thing about it is that over half of the
17 landfills are now closed. And through the course of
18 developing this information, one of the slices of the pie
19 that we actually identified was the 29 single landfill
20 operator privately operated landfills. So if you look at
21 sort of the turquoise slice in the upper right-hand
22 corner, you'll see 29 landfills. Of those, 18 of those
23 are already closed. And that particular group seems
24 particularly challenging in terms of the long-term
25 financial assurances effort that we're talking about

1 today.

2 Next.

3 --o0o--

4 DIVISION CHIEF ORR: One of the other things
5 through running various versions of the working model,
6 we've basically identified that landfill costs will
7 continue to escalate. The long-term maintenance costs
8 will continue to escalate over time.

9 And the blue bars shows how much the accumulated
10 long-term financial assurances might be if costs stayed
11 the same.

12 And then the red bar basically shows what
13 long-term financial assurances might cost if they actually
14 decay over time.

15 So even at that, there is a significant liability
16 that continues to be posed by the dry tomb landfills.

17 We're going actually focus on today's discussion
18 on basically what would things look like for 100-year
19 period. It's something that's more conceivable really I
20 think than say a 200 or 240-year period, which becomes
21 very speculative.

22 --o0o--

23 DIVISION CHIEF ORR: So in terms of what actually
24 does it cost to maintain a landfill, we've basically taken
25 all of the results from the postclosure maintenance cost

1 estimates that are currently in our books. And for small
2 landfills, those are basically consistent with the size
3 that was used in the contractor's study. There is an
4 average of \$50,000 per year to maintain a small landfill.
5 On the large side, landfills that are greater than 30
6 million cubic yards average over a million dollars a year.

7 Next.

8 --o0o--

9 DIVISION CHIEF ORR: This actually shows the
10 distribution of costs by size. And you'll see that there
11 are cluttered all around the low end. But the average
12 again there for the large landfills is \$1.1 million a year
13 for maintenance.

14 Next.

15 --o0o--

16 DIVISION CHIEF ORR: So probably the most
17 important question that you could ask and answer today is
18 should the financial assurances requirements be extended
19 beyond the current 30 years. And if so, how do we want to
20 do that. So I'll be presenting several different options
21 to show you how that might be done. There might be other
22 option. But I think it will give you a range of ideas.

23 Another way of extending additional money would
24 be to add a reasonable contingency, because we're not
25 really sure what post closure maintenance costs are going

1 to look at in 20, 50, or 70 years, whenever the landfill
2 is going to close.

3 And then finally, should we allow reductions in
4 postclosure maintenance costs in advance before they're
5 actually realized.

6 Next.

7 --o0o--

8 DIVISION CHIEF ORR: So how long does postclosure
9 maintenance last? Well, under the federal regulations,
10 the standard postclosure maintenance period is 30 years.
11 But it can be shortened or extended by the director of an
12 approved state. However, financial assurances under the
13 federal law, if they are extended, they are required to be
14 maintained throughout the postclosure maintenance period.
15 But exactly how you get there is not clear from current
16 federal regulations beyond 30 years.

17 Under California law, there is a minimum of 30
18 year postclosure maintenance period. And basically the
19 burden of proof is reversed from the federal law where
20 instead of the State having to extend the postclosure
21 maintenance period, it's up to the operator to demonstrate
22 the waste no longer poses a threat.

23 Next.

24 --o0o--

25 DIVISION CHIEF ORR: Now in addition during the

1 course of the last several months, staff has looked at the
2 California experience. We've done a pole of other states.
3 And basically we've concluded it's too early to tell when
4 postclosure maintenance will end. There's also been a
5 national effort. The Interstate Technology and Regulatory
6 Counsel, or ITRC, that's developed a methodology to try to
7 determine how you can either reduce or eliminate
8 postclosure maintenance. But it's a very new approach and
9 there's no proven track record. So nobody knows when
10 postclosure maintenance will end, but we believe we'll
11 know when we see it.

12 Next.

13 --o0o--

14 DIVISION CHIEF ORR: So this is basically a range
15 of options that staff has developed in working with
16 stakeholders over the last six months -- well, actually
17 some of these reflect a longer period of time.

18 But I think the key thing here is it might be
19 good to think of this as a retirement plan for landfills.
20 And the individual demonstrations would be more akin to an
21 IRA. Whereas, something we'll be talking about a little
22 bit later, a pooled fund would be more similar to a
23 retirement system. So in terms of the individual
24 demonstrations -- if you go to the next one --

25 --o0o--

1 DIVISION CHIEF ORR: The first option is
2 basically perpetual care. And the original staff analysis
3 figured that with an additional eleven years of financial
4 assurances plus a 20 percent contingency for a total of 49
5 years of financial assurance that basically the money will
6 be there to pay for postclosure maintenance indefinitely.

7 Next.

8 --o0o--

9 DIVISION CHIEF ORR: Now the pros of that -- and
10 this is actually not just staff's perspective. This is a
11 variety of perspectives that include staff and the various
12 stakeholder groups. Is on the one hand, it's the most
13 protective in terms of providing for the money. It will
14 also allow to pay for the actual postclosure maintenance
15 from interest earned. And it will ensure that the costs
16 are fully assured.

17 On the negative side, stakeholders are concerned
18 we're basically front-loading the costs especially for
19 trust funds and cash mechanisms that it will tie up
20 exorbitant sums of money. And it's particularly
21 burdensome for closed landfills to capture additional
22 financial assurances or landfills that are nearing closure
23 that would need to put aside additional financial
24 assurances at a greater rate.

25 Next.

1 --o0o--

2 DIVISION CHIEF ORR: The second option would be
3 to continue to require 30 years of postclosure maintenance
4 until the waste no longer poses a threat. Essentially
5 this option would pay for the last 30 years of postclosure
6 maintenance.

7 --o0o--

8 DIVISION CHIEF ORR: The pros on that is that
9 this amount would be sufficient for permanent and
10 temporary defaults on the part of the operator. It would
11 also make interest available for use for postclosure
12 maintenance. And operators actually may get a greater
13 return on their investment than the State. So it may
14 cover a significant portion of the postclosure maintenance
15 costs, or they could use it for other infrastructure or
16 other purposes.

17 The concerns include it may be viewed as paying
18 the cost twice, because in a sense you have to have the
19 financial assurance, and you have to find another way to
20 actually pay for the postclosure maintenance cost that may
21 exceed the interest that would be available for that
22 purpose.

23 Several landfill operators that have been paying
24 into a mechanism for some period of time may have been
25 counting on using the principle for postclosure

1 maintenance and the interest for other infrastructure or
2 other unrelated projects to postclosure maintenance.

3 And similarly, this one could be viewed as
4 burdensome for closed landfills, because again if they're
5 already in closure, they may have depleted a portion of
6 their funds and they would have to find a way to make up
7 the difference.

8 Now there are a variety of different financial
9 mechanisms. This doesn't require that someone set aside
10 cash to do this. You could supplement that with other
11 non-cash mechanisms such as pledge of revenue, corporate
12 guarantee, those kinds of things.

13 Next.

14 --o0o--

15 DIVISION CHIEF ORR: Now this is actually sort of
16 a staff generated option. We call it sort of the good
17 drivers discount. It would start off with a rolling
18 30-year maintenance period, but would allow for a step
19 down to reward good actors. And that would be done
20 through a five-year postclosure maintenance review. And
21 based on a good maintenance record, having no corrective
22 actions during that period, and participating in enhanced
23 monitoring like the ITRC model, the landfill would be
24 eligible to have a step down. And that would be something
25 that the Board would decide.

1 Next.

2 --o0o--

3 DIVISION CHIEF ORR: Now, the pros of this is it
4 actually has a significant reduction in the assured cost
5 required. It would begin to allow the Board to develop
6 postclosure maintenance data trends. It would be
7 sufficient to cover temporary defaults on the part of an
8 operator, but not necessarily permanent ones. But it
9 would also provide that there was sufficient resources to
10 minimize litigation and discourage morale hazards by
11 someone basically figuring that somebody else would take
12 care of the financial assurances.

13 The cons that were expressed by some stakeholders
14 is that this approach may be perceived more as a
15 roadblock, not as an incentive. It may be too cumbersome.
16 And they've also questioned the connection between
17 postclosure maintenance and corrective action, which from
18 a staff perspective, postclosure maintenance is the
19 preventive medicine to corrective action. That's the
20 connection that we see there.

21 Next.

22 --o0o--

23 DIVISION CHIEF ORR: Now another option would be
24 similar to the last, but instead of having a step down
25 based on good performance, this would basically allow a

1 draw down to a pre-determined amount. In this case, 15
2 years. It would also include a five-year postclosure
3 maintenance review, but would allow regular disbursements
4 down to that floor of 15 years, except possibly if you
5 have a problem site where you were very concerned that the
6 site may default. And with the Board's positive or
7 affirmative direction, that may not be required.

8 Essentially a way of describing this, it would
9 pay for the first 15 years of postclosure maintenance
10 while you're drawing down, and the last 15 years of
11 postclosure maintenance as you're basically ending things
12 up.

13 Next.

14 --o0o--

15 DIVISION CHIEF ORR: Now the pros on this one is
16 again it's a similar significant reduction in assured
17 costs like the last option. It's actually consistent with
18 pre-subtitle D California law that required a 15-year
19 rolling period. It also would be sufficient for temporary
20 defaults. And like the last option would minimize
21 litigation and morale hazard.

22 Now on the con side, there are some stakeholders
23 that simply oppose any extension of the financial
24 assurance requirements.

25 Next.

1 --o0o--

2 DIVISION CHIEF ORR: Now this basically is the
3 status quo or the current option. Basically, it allows or
4 basically provides for the payment of the first 30 years
5 of postclosure maintenance and then it's unclear what
6 happens at that point if the postclosure maintenance
7 period continues. It also allows for regular
8 disbursements or reductions in the fund.

9 Next.

10 --o0o--

11 DIVISION CHIEF ORR: On the pros, stakeholders
12 suggest that the 30-year postclosure maintenance financial
13 assurance is adequate, that many of the landfill
14 settlement and other things will have largely occurred by
15 the end of 30 years and costs will largely have stabilized
16 by then.

17 They also suggest that under federal law we can
18 extend the postclosure maintenance period and financial
19 assurances as I mentioned earlier. But under California
20 law, that's already done by operation of law.

21 They also point out that defaults are rare, which
22 we'll get to here in a minute. On the con side, there is
23 sort of a built-in problem which really this whole
24 initiative has been about since 2003 that there is
25 difficult time to extend financial assurances from a

1 practical standpoint after the funds have been defeated at
2 the end of 30 years. If they don't have the financial
3 wherewithal, where is the money going to come from.

4 It's unlikely based on what we've seen so far the
5 postclosure maintenance is likely to end at 30 years. It
6 also introduces morale hazard that someone else may do it
7 if you are not around. And it also can put an increased
8 burden on litigation and the costs associated with that.

9 Finally -- and this is something that staff has
10 really only identified in the last couple of months -- is
11 that if there is no financial assurances after 30 years,
12 then there would be no financial test for the transfer of
13 a landfill to another party after 30 years. So at that
14 point, you may not have a major landfill company owning
15 the property. It could be an undercapitalized company
16 that would be more akin to a single private landfill
17 operation.

18 Next.

19 --o0o--

20 DIVISION CHIEF ORR: Now this chart here just
21 basically describes how long money will last if the State
22 has to basically cash in the financial assurance
23 mechanism. On the left-hand side, as I indicated earlier,
24 if there's 49 time multiplier, it essentially will last in
25 perpetuity.

1 If you have 30 -- 43 times annual cost, it will
2 last for over 100 years.

3 With a rolling 30-year demonstration, if we had
4 to cash it out, it would last for approximately 46 years.
5 If you get down to the low end, the step down or draw down
6 method, at that point you really don't have the benefit
7 for costs accumulating over time. And it basically is
8 about the same period, 18 years for a 15-year
9 demonstration.

10 Next.

11 --o0o--

12 DIVISION CHIEF ORR: This is probably the most
13 important slide that I'll show you today. So if you don't
14 look at any other slides I've put up here, this is
15 probably the most important one.

16 And what it shows is the overall system cost for
17 postclosure maintenance and basically it side by side
18 compares the different options I just went over.

19 On the far left-hand side, if you had a perpetual
20 care type option, this is actually using the 43 times
21 multiplier. Essentially all of the system costs for
22 postclosure maintenance would be assured.

23 And the only part that wouldn't be covered, which
24 you can't even see it's so small, is what would be a
25 double default. If the landfill operator and the

1 financial assurance company both defaulted at the same
2 time.

3 The next option would be the rolling 30 years.
4 And as you can see, about 60 percent of the cost would be
5 assured during a 100-year period. And you see a slightly
6 larger red slice, which are the predicted default rates
7 that may occur over a 100-year period.

8 Looking at the step down or draw down method, it
9 would be more akin to about 40 or so percent of the cost
10 would be assured during the 150-year period and a slightly
11 larger default rate.

12 And then finally on the far right-hand corner is
13 the current scenario where can you see about 30 percent of
14 the costs are assured during that 100-year period. Quite
15 a bit of it -- well, the rest of it would be exposure.
16 But what we're seeing in the orange slice there is what I
17 described earlier. Sort of the possible transfer of
18 property after the landfill is beyond 30 years. And so if
19 we could go to the next one, I'll put some numbers on it.

20 --o0o--

21 DIVISION CHIEF ORR: So this is basically looking
22 at what the cost might be to the State. Under the
23 perpetual care option, the amount is very small. The
24 double default that I mentioned is on the order of \$60,000
25 per year. Very small. That's over a 100-year period.

1 Using the rolling 30 option, that would be about half a
2 million dollars a year in expected defaults at one percent
3 or so default rate using the computer model that we've
4 used. And the exposure to the State unassured costs would
5 be about \$25 million a year.

6 If you looked at the draw down or the step down
7 method, there would be an estimated \$900,000 per year in
8 default costs that would need to be borne by someone. And
9 it would have an unassured value of about \$30 million.

10 And then finally under the status quo, there's a
11 certain level of uncertainty in terms of how many of those
12 properties might change hands over the course of 100
13 years, but you might expect that it would be somewhere
14 between that \$900,000 and \$10 million a year in default
15 values if you use a default rate for start-up companies
16 during that time frame. And the unassured amount would
17 basically be after the 30 years, and that would amount to
18 about \$40 million a year in unassured costs.

19 Next.

20 --o0o--

21 DIVISION CHIEF ORR: So actually you've made it
22 through the tough part. So I'll continue to go through
23 the remaining items.

24 One other option for extending the life of the
25 money would be to add a reasonable contingency. Some

1 stakeholders have suggested that we apply that contingency
2 to capital costs only. However, as stakeholders also
3 point out, postclosure maintenance is not a capital
4 intensive process. And so if you went this way, it could
5 be probably 100 percent. And it would be still a very
6 small number, because there are very few capital costs
7 associated with postclosure maintenance.

8 Some stakeholders have suggested using public
9 works projects basically capital outlay type projects
10 under the State Administrative Manual by housing and
11 community development, by the Public Works Board. And
12 they range from five to ten percent. We don't think
13 they're particularly comparable, because they're really
14 construction contingencies, not really maintenance
15 contingencies.

16 So we did a survey of our counterparts around the
17 country, and we found that 60 percent of 25 states that
18 responded to our survey are in fact charging a postclosure
19 maintenance contingency ranging from 5 to 50 percent.

20 --o0o--

21 DIVISION CHIEF ORR: If you go to the next slide,
22 this basically shows a histogram. The post common
23 percentage that's applied in other states is ten percent
24 postclosure maintenance contingency.

25 --o0o--

1 DIVISION CHIEF ORR: Moving on to corrective
2 action, if postclosure maintenance is the retirement
3 amount for landfills, you might view corrective action as
4 the health insurance for corrective action.

5 So the first question is there a need for health
6 insurance beyond the water quality corrective action.

7 We'll also take a quick look at differentiating
8 corrective action from postclosure maintenance. We'll
9 present a couple of options for pursuing that that are a
10 lot less complicated than the ones for postclosure
11 maintenance and then briefly cover what might be included
12 in a corrective action plan.

13 Next.

14 --o0o--

15 DIVISION CHIEF ORR: The first thing we did was
16 to define some terms. A known corrective action is
17 basically one that's already occurred. You know what it
18 is. You have the cost to repair the damage.

19 A reasonably foreseeable corrective action in our
20 working definition has to be at least that which is known,
21 but also is something that would be within the design of
22 the landfill. So, for example, if you have a landfill
23 that doesn't have a gas control system in yet, that might
24 be a reasonably foreseeable corrective action. If you're
25 designed for a certain landfill or there is a certain

1 landfill requirement and you don't meet that standard
2 because you're an older landfill, the gap between the
3 design and the requirement would be reasonably
4 foreseeable.

5 We also coined the term extraordinary corrective
6 actions, which would be those that are beyond the design
7 of the landfill. So it might be something like a larger
8 earthquake or say a total final cover failure.

9 There's also extremely rare events that we really
10 didn't capture in this picture. It might be cataclysmic
11 type of events like a jet liner crashing into a landfill
12 that you really can't engineer.

13 Next.

14 --o0o--

15 DIVISION CHIEF ORR: We did also a compliance
16 survey or corrective action survey of the 282 landfills in
17 the state. And what we found was that the corrective
18 action frequency was fairly similar to that which was
19 modeled by the contractor in the methodology that was
20 developed last fall, except for smaller landfills that are
21 typically not captured through enforcement actions.

22 Next.

23 --o0o--

24 DIVISION CHIEF ORR: These are the most common
25 corrective actions that were found in the survey. The

1 largest majority of them are ground water and water
2 related, but landfill gas is also significant.

3 One of the more interesting ones was boundary
4 issues where the footprint of the waste was outside of
5 that which was expected.

6 Next.

7 --o0o--

8 DIVISION CHIEF ORR: We've also spent a fair
9 amount of time in looking at breaking down what's
10 corrective action versus postclosure maintenance. And the
11 bottom line for postclosure maintenance is that it's
12 something that would be covered in the postclosure
13 maintenance plan. Whereas, corrective action would be
14 asking that is more contingent, not something that is
15 certain or a recurrent type of event. And a lot of time
16 it's simply a matter of degree. If it's a relatively
17 isolated thing, it would be postclosure maintenance. If
18 it's something more pervasive throughout the site, it
19 would be corrective action.

20 One concern on the corrective action side is you
21 don't want to deplete your postclosure maintenance
22 financial assurances trying to do corrective actions that
23 weren't really contemplated in the plan.

24 Next.

25 --o0o--

1 DIVISION CHIEF ORR: So as I mentioned, the
2 options here are simpler and more straightforward.

3 First option would be to continue with the
4 current system, which would be water quality corrective
5 actions only.

6 The second option would be to piggyback on the
7 water quality corrective action financial assurances.

8 Third option would be to have a separate
9 non-water corrective action financial assurance.

10 Next.

11 --o0o--

12 DIVISION CHIEF ORR: The pros on piggybacking on
13 the water quality corrective action would be in a sense
14 it's a win-win that you would get additional financial
15 assurances that would provide for a broad array of
16 corrective actions without imposing an additional burden.
17 It would also have the side benefit of increasing the
18 compliance rate with the current water quality corrective
19 action requirements.

20 On the cons, basically stakeholders have
21 suggested that we should actually focus on increasing
22 compliance on existing financial assurance before doing
23 more, which we actually have worked closely with the Water
24 Board. And during the last six months, we've met with the
25 executive directors.

1 Letters have been sent out by the regional boards
2 to the landfill operators. We've met with the Regional
3 Water Board round table and actually increased the
4 compliance rate from about 31 percent to 38 percent in the
5 last six months.

6 Also stakeholders have suggested that non-water
7 quality corrective action is unforeseeable.

8 And finally, if you use the financial assurance
9 for more things, you may have to actually replenish it
10 more often.

11 Next.

12 --o0o--

13 DIVISION CHIEF ORR: Now depending on what option
14 the Board were to pursue, you would either have one
15 combined corrective action plan, the primary purpose of
16 which would be to determine what the most expensive
17 corrective action type would be. That would drive
18 basically what the amount of the assurance would be. In
19 most cases, staff believes that the water quality pump and
20 treat type corrective action would be the most expensive
21 corrective action and drive the costs. If not, then you
22 have a separate plan.

23 Next.

24 --o0o--

25 DIVISION CHIEF ORR: Now these are the other

1 items that the Board may choose to include in the Phase 2
2 rulemaking. These couple of items are follow ups to the
3 long-term financial assurance study.

4 First of all, to make some additional amendments
5 to the insurance provisions so they are no longer
6 guaranteed investment contractors, or GICs. And then to
7 produce a standardized form for the pledge of revenue to
8 increase transparency.

9 Next.

10 --o0o--

11 DIVISION CHIEF ORR: To require for landfills
12 that were closed prior to 2003 to have a five-year review.
13 Currently, landfills that have closed since 2003 have a
14 closure permit. And also that would need to basically
15 update your plan whenever you do a permit or revision.

16 Next.

17 --o0o--

18 DIVISION CHIEF ORR: In regard to closure
19 certification, the submittal of as-built costs with the
20 closure certification report, that would again help to
21 begin to develop what closure costs truly are. And to
22 include a deadline for the submittal of the closure
23 certification report. Ninety days came up as a suggestion
24 during our workshop.

25 Next.

1 --o0o--

2 DIVISION CHIEF ORR: Whether or not to formalize
3 the outcome of the cost estimating dialogue to add
4 additional clarifying language to the regulations
5 regarding premature closure on the maximum extent of
6 closure and whether to include or elaborate on the list of
7 items that are required for closure.

8 Next.

9 --o0o--

10 DIVISION CHIEF ORR: Under the heading of
11 continue to develop, we held a workshop on pooled fund
12 options. We've continued to do a lot of work in this
13 area. I have another slide I would like to talk about
14 just briefly on this.

15 As was mentioned, the last agenda item included
16 the best management practices to minimize postclosure
17 maintenance costs. And as a piece of that to look at
18 customizing the criteria for optimizing or ending
19 postclosure maintenance to tailor that to California
20 requirements.

21 Next.

22 --o0o--

23 DIVISION CHIEF ORR: Going back to the slide that
24 I showed earlier, in addition to taking a look at the
25 exposure for individual financial assurance, this same

1 slide could be used to help properly size a pooled fund.
2 Depending on which option the Board may choose for
3 individual financial demonstrations, then you could look
4 at what's left and decide from a public policy standpoint
5 whether or not it would make sense to have a pooled fund.
6 Or you can look at it the other way and say if the Board
7 was interested in pursuing a pooled fund, the Phase 2
8 regulations would look very much different. And so if
9 you're doing a pooled fund, you may say is it worth doing
10 an individual demonstration depending on that direction.

11 Next.

12 --o0o--

13 DIVISION CHIEF ORR: In terms of the pooled fund,
14 the main feedback that we're getting is on the pro side
15 that as I mentioned earlier the 30-year postclosure
16 maintenance financial demonstration is adequate. That
17 that's a reasonable approach and that defaults are rare.

18 On the con side of the pooled fund, stakeholders
19 are concerned that they don't want to pay for other
20 people's problems, that it may shift the cost from
21 responsibility by individual landfills to the general
22 payers. That it may encourage morale hazard if people
23 know that there is a pooled fund out there to rely upon.
24 And then depending on the fund desire, and that was the
25 slide I covered, it may or may not cover all of the costs.

1 Next.

2 --o0o--

3 DIVISION CHIEF ORR: Two items that we suggest
4 not pursuing further at this time are the fund as you fill
5 financial assurance regulation. We have not had any
6 takers on it from the standpoint of the landfill operators
7 or LEAs. And at this time, we don't have a suggestion for
8 the use of the contract scoring model. So we are not
9 suggesting pursuing that further at this time either.

10 Next.

11 --o0o--

12 DIVISION CHIEF ORR: So we're to a fork in a
13 road. The question is which fork do we want to take. And
14 Yogi Barra who's being ever advise suggest that when you
15 come to a fork in the road to take it.

16 In summary, we're looking forward to receiving
17 questions and direction from the Board, whether it be
18 today, next week or next month. And we're available --
19 next.

20 --o0o--

21 DIVISION CHIEF ORR: To answer any questions that
22 you may have.

23 CHAIRPERSON BROWN: Great. Thank you, Bill, very
24 much.

25 Not surprisingly, we have lots of input. Do we

1 have specific questions on the presentation before we go
2 to speakers? Let's start with speakers then. First is
3 Grace Chan.

4 MS. CHAN: Good afternoon, Madam Chair, Board
5 members. Grace Chan with Los Angeles County Sanitation
6 Districts.

7 We've participated with you and your staff all
8 along on these issues since the passage of AB 2296. And I
9 appreciate the opportunity to speak to you today on just a
10 couple of the specific concerns.

11 While we feel the financial assurance program may
12 need strengthening with respect to the language in AB
13 2296, which was with respect to unforeseen circumstances,
14 we don't feel the need for a wholesale overhaul of the
15 system or the proposed multi layered assurances. We
16 believe many of these topics if they do occur would be
17 foreseen and therefore able to be addressed ahead because
18 of the ongoing strict regulatory oversight we have in
19 California, the strong focus on adequate cost estimates or
20 accurate cost estimates rather, extensive monitoring, and
21 ongoing review.

22 We do have a significant concern on the latest
23 staff proposal specifically with respect to the trust fund
24 mechanism and the proposed provision to use only the
25 interest rather than the principle for postclosure

1 maintenance.

2 The trust fund has been described as one of the
3 most secure financial assurance mechanisms primarily
4 because you do have cash set aside. This proposal will
5 instead depend on future interest rates for the security
6 as opposed to the cash on hand interest rates that will of
7 course fluctuate into the future. So to us, we use trust
8 funds, it seems to us to introduce another level of
9 insecurity.

10 We also have a philosophical concern with
11 changing the use of these funds that have been collected
12 and possibly even a legal issue in that these funds were
13 collected and set aside for actual maintenance activities
14 under an official state agency program. The proposal then
15 would be to disallow the use of those funds for the
16 purposes for which they were collected and instead freeze
17 those funds and change their use to simply be a mechanism
18 as an interest bearing account.

19 So we're going to continue to work with our legal
20 counsel on that. I'm not here today to speak specifically
21 on that other than to raise the issue.

22 We do have an option that we've developed in
23 house recently. And I'm not prepared to go over it with
24 you today, because we'd like to work with your staff on it
25 first. But it has to do with leveraging a reasonable

1 contingency fund to address some of these other issues.

2 And we think it does have some potential as a compromise

3 mechanism. So we would like to work with your staff

4 further on that and then come back to you later.

5 Thank you.

6 CHAIRPERSON BROWN: Thank you, Grace.

7 Next speaker is David Tieu.

8 MR. TIEU: Good afternoon, Madam Chair and

9 members of the Board. First like to say kudos to Bill Orr

10 and the staff. They worked really hard over the last few

11 months, and they looked at all the different issues from

12 the State perspective to that of the operators. I just

13 want to say thank you to the staff.

14 With that being said, you know, I'm here today to

15 raise concerns regarding some of the financial options

16 that have been proposed by your staff in today's meeting.

17 In Orange County, we have used the pledge of revenue as

18 the primary means for funding postclosure maintenance

19 activities. It has worked well for us and provided the

20 necessary financial assurance to the state. We believe

21 the current financial framework is robust and changes our

22 needed.

23 That being said, we strongly oppose any financial

24 option that would require landfill operators to set aside

25 a significant amount of moneys without access to

1 principle. In the case of a rolling 30-year financial
2 assurance demonstration, only the interest can be used to
3 fund PCM. A landfill operator is denied access to the
4 principle that were set aside for the purpose of forming
5 PCM. However, the interest alone may not be sufficient in
6 a weak market and therefore landfill operators will face
7 the great challenge of finding other sources of funding to
8 cover the shortfall. The principle would only be returned
9 once PCM has ended. By then the moneys are no longer
10 needed to fund for PCM.

11 That would be analogous to saving for retirement
12 but not being able to access the moneys until you are
13 essentially six feet under.

14 You know, this retirement scenario makes little
15 financial sense and makes no sense either to look up
16 exorbitant amounts of money in the case of a rolling 30.
17 The 30 with draw down alternatives are better financial
18 options, but there's still problems with each of them.
19 Staff proposal would establish a floor of 15 years.
20 Thereby, half of the 30 year PCM funds would be locked up
21 or unavailable in perpetuity.

22 Again we are still getting into a situation where
23 significant amounts of money would be restricted. So, you
24 know, why not lower the 15 year floor to a five-year
25 floor. This provides landfill operators the full access

1 to the principle for the first 25 years of PCM yet
2 guarantees the state the rolling five years of financial
3 assurance for the remaining PCM period. Because we don't
4 know when that's going to be.

5 This proposal is less burdensome to landfill
6 operators and would provide existing financial assurance
7 regulations rather than making wholesale changes that are
8 not in a financial position to embrace.

9 Regarding landfills that are currently closed, we
10 do oppose any financial option that would require
11 reestablishing the principle equal to 30 years of PCM.
12 Landfill operators would face a significant and undue
13 financial burden to reestablish the 30-year principle,
14 particularly for those landfills that have been in the PCM
15 period for quite some time now.

16 We do recognize the Board has come up with a
17 financial option that would extend the financial assurance
18 beyond 30 years. Again, we recommend a rolling five years
19 worth of financial assurance until the PCM period has
20 terminated. This will provide the State an additional
21 level have protection without excessively burdening
22 landfill operators.

23 Also want to talk about the pooled fund. You
24 know, you have heard the concept of the pooled fund for
25 corrective action and PCM defaults. As you consider the

1 pooled fund as I mentioned, from an operator point of
2 view, defaults by California landfills are extremely rare.
3 You know, we do support a limited pooled fund between 25
4 and \$50 million. But in all honesty, you know, we don't
5 believe that the OC recycling would benefit in the pooled
6 fund. But if the pooled fund provides an additional layer
7 of financial assurance to the State, that would be
8 acceptable to us.

9 Now that being said, our support of a limited
10 pool fund is contingent upon repealing the PCM contingency
11 coupled with a financial option that allows access to the
12 PCM funds.

13 So in closing, I know the Board has many options
14 to consider and has to weigh through the best option that
15 will protect the state. But please remember as you
16 attempt to solve one problem, you don't create other
17 problems. Landfill operators have limited funds. And if
18 the moneys are tied up in the other programs, other
19 landfill infrastructure will have to be scaled back.

20 So I thank you for your time and considering my
21 comments.

22 CHAIRPERSON BROWN: Thank you very much, David.

23 Our next speaker is Evan Edgar.

24 MR. EDGAR: Good afternoon, Board members. My
25 name is Evan Edgar on behalf of the California Refuse

1 Removal Counsel.

2 I was part of the 2296 working group. It was
3 great to have the Easton team back of Bill Orr and Bernie
4 Vlach. I was around in 1988 when the Waste Board adopted
5 the regulations for the landmark and every piece of
6 regulation was wrote in the record by Bill Orr. It was a
7 landmark event. Good to have him back.

8 I started with CRRC in 1993 with subtitle D day
9 with Castle and Garth Adams. And once again, it was good
10 to have that team back at the table as part of the working
11 group. So we had a lot of experience, a lot of workshops,
12 a lot of studies, a lot of effort. So we commend the
13 staff, the Easton team back into gear to make some good
14 recommendations.

15 We support all options. I think that as part of
16 this working group, there was a lot of good ideas. And to
17 have all options in the report is critical because you
18 need to have the whole suite of information in front of
19 you to make key decisions about the future of landfilling.
20 So to have all options included -- and we would support it
21 including the SWIG option, even though CRCC is not part of
22 the ad hoc SWIG group on this matter. But it's good to
23 have the SWIG option part in the record in the report to
24 the Legislature.

25 We do believe landfills are forever, or until

1 they no longer pose a threat to the environment. And that
2 landfills should have full cost accounting. I think the
3 landfill should expose all their cost and embed the cost
4 as part of the gate fee. And that should not be a risk
5 that put off for the future generations or to other
6 taxpayers. So we believe in full cost accounting.

7 CRRC does support the perpetual care model.
8 Since landfills are forever, we believe there should be a
9 mechanism out there for 41 years based upon the modeling
10 down to take care of landfills at the gate as part of the
11 full cost accounting practice.

12 We support perpetual care because we are in the
13 community. We are third and fourth generation. We
14 believe in personal responsibility. We co-locate our MRFs
15 and our compost facilities at landfills. We're not going
16 anywhere. We will be at the landfill maintaining it for
17 our compost facilities and our MRFs in our communities.
18 So we will be doing O&M forever as long as we keep doing
19 zero waste society of composting and MRFing.

20 We want to maintain the real estate. The real
21 estate has value. And when the trust fund is finally
22 available, it will go on to the next generation will be
23 able to access the trust fund and continue on zero waste
24 in that community. So we would have a perpetual care
25 model instead of going into a pooled fund.

1 We also support the five-year permit review.

2 Every five years come back and take a look at the
3 landfill. Look at the threat to the environment. Look at
4 the trust fund amount. Take a look at it and see how well
5 that landfill is acting in the future environment with
6 future technologies so we believe that.

7 We believe in a private/public equity matter that
8 whatever the private sector does, the public sector does.
9 The whole private equity is key.

10 And we believe somewhat of a grandfather clause
11 should be in place for the closed landfills of the day.
12 So whatever that is, I believe that they should get
13 special consideration.

14 We oppose a pooled fund because in a lot of cases
15 we will not be able to pass through the incremental fee.
16 We believe it's more like an HMO as opposed to an
17 insurance policy. And we won't have access to that money.
18 If we have a trust fund, we are in control of that trust
19 fund. We can invest in the trust fund. We can get an
20 interest rate on the trust fund. In the pooled fund, I
21 believe they get 1.5 percent. Whatever money goes in there
22 will be lesser value and less investment potential.

23 COMMITTEE MEMBER CHESBRO: Maybe we can get
24 CalPERS to manage the money for it.

25 MR. EDGAR: And currently CRRC is opposed to the

1 De Leon bill that limited pool fund of record and we
2 oppose that.

3 So we look forward to serving on the AB 2296
4 working Committee and will be around for the next
5 generation. Thank you.

6 CHAIRPERSON BROWN: Thanks you, Evan.

7 Our next speaker is Larry Sweetser.

8 MR. SWEETSER: Good afternoon, Board members.

9 Larry Sweetser on behalf of the Rural Counties
10 Environmental Services Joint Powers Authority. We've also
11 been a very active participant in the work group meetings.
12 We've been involved in every single one of them.

13 Many, many issues were discussed. Staff
14 definitely has gotten a workout on issues. Before I start
15 listing our concerns, I want to assure you there was many
16 issues discussed and commonality. And what you're hearing
17 are the remaining issues.

18 First off, the whole issue about postclosure
19 being more than 30 years, I understand the concern about
20 what's going to happen after the 30 years. And just to
21 let you know, I've talked to our member counties. Most of
22 them were really under no Delusion that postclosure was
23 only going to last 30 years. Most assume there was going
24 to be some cost associated for much beyond that. That has
25 not been an issue we focused on.

1 Most of our members use the pledge of revenue,
2 and the agreement themselves have provisions. Not just
3 limiting the 30 years, but going beyond that. So I
4 already addressed that issue.

5 As far as how long, the whole issue of a rolling
6 concept is pretty attractive. We do share the concern
7 about not having access to that principle money for those
8 that have money set aside. Some sort of five-year review
9 just like we do on many other things with solid waste
10 facilities. That five-year mark is a good one to use for
11 review.

12 One other request if you are going to allow the
13 draw down for future years, not have it contingent upon
14 the enhanced monitoring. We feel if you're operating your
15 landfill in compliance, you shouldn't be penalized by not
16 allowing to have a reduced cost if you can demonstrate
17 that's a true cost. You be penalized because you weren't
18 doing additional monitoring.

19 Regarding the list of postclosure or corrective
20 action items, we spent a lot of time sorting out which
21 ones go where. Quite honestly, I think we've come up with
22 a very good list. Some things are never going to fit in
23 one box or another. It's very easy -- many of the will
24 transition from being a postclosure to directive action.
25 It all depends on severity. We want to see some

1 flexibility to be maintained, not just have a static list.

2 The non-water corrective actions, understand the
3 need for concern about that. That has not been too much
4 of a focus of our membership.

5 One request. If you do proceed, not create a
6 whole other financial assurance mechanisms that we have to
7 have funding set aside for. Every time we set up one of
8 those, there's cost associated with it, effort. If you do
9 proceed with that, keep it under the existing mechanisms.

10 Regarding the deadline for submittal, staff
11 wanted assurance that documents would be forwarded in a
12 reasonable manner. Ninety days seems like a reasonable
13 time frames. We did discuss in the group having some
14 flexibility beyond that. This is a study that needs to be
15 done. It may take more time than the 90 days along.

16 One other request that came out of the group, if
17 we have a deadline for submittal documents, we'd like to
18 have some time frame of certainty for staff review or at
19 least to get back to us with a response. Your staff has
20 been very good at that in general. Just would help to
21 have that assurance of that additional time.

22 Pledge of revenue, we've been a big supporter of
23 that. Nearly all of our members use that for one
24 mechanism for one or the other.

25 DIVISION CHIEF ORR: Eight. We are agreeable to

1 having some standard format. That has not been an issue
2 for us. We think it's another opportunity to demonstrate
3 how valid the pledge of revenue concept is. It's not just
4 a piece of paper. I've had extensive discussions with our
5 folks as well as a number of financial institutions, and
6 they treat those pledge of revenues just like any other
7 financial obligation. That amount of money set aside is
8 preserved out there and held against those jurisdictions
9 on any future other financing they do, bonds or anything
10 else. So it is a valid mechanisms.

11 The postclosure maintenance survey that's being
12 done, we do have great expectations of that, because
13 always like to see real numbers associated with these
14 concepts when we're talking about costs in the future.
15 Also, there's some staff that has done quite a bit of
16 research on actual costs at facilities themselves. And
17 Andy Moreno had done some of that, and I think that's very
18 valuable demonstrating real costs that have been spent and
19 taken into account.

20 Lastly, our concern will continue -- I won't get
21 into detail now -- is the pooled fund. We've maintained
22 opposition to that throughout. We've had extensive
23 conversations with our local government associations, the
24 League, CSAC, SWANA. All of them have similar concerns to
25 ours about pursuing a pooled fund and we're working on

1 formal comments.

2 So with that, just to let you know we'll continue
3 to attend the meetings and appreciate staff's efforts.
4 Thank you very much.

5 CHAIRPERSON BROWN: Thank you very much, Larry.

6 Our next speaker is Mike Mohajer.

7 MR. MOHAJER: Madam Chair, I think mine is going
8 to be pretty short. I'm also representing L.A. County
9 Task Force on this issue as well and I've also served on
10 the working group. And being a bureaucrat for most of my
11 life, I want to congratulate your staff with doing a darn
12 good job and putting up with 7,000 different directions
13 that each member of the Committee wanted to go.

14 So having said that in, in general, because the
15 way we operate in L.A. County with landfills I know just
16 L.A. County, not the Task Force. We got it at 30 years.
17 And so in general the staff recommendation, most of it
18 seems to be yes to what has been proposed.

19 But we are opposed to any pooled fund. And I
20 think staff expressed it pretty well. I was sitting back
21 there reading on the bottom of page 25 it says, "Creating
22 a pooled fund places greater shift away from private
23 operator may occur upon the release of landfill
24 owner/operator from their long-term landfill financial
25 assurance obligation which only private operator would

1 likely ultimately achieve. Local government operators
2 being in position to raise additional tax revenue as
3 necessary to continue to maintain the legacy of closed
4 landfill may become liable for those private landfills as
5 well as by virtue of general public having used them for
6 private waste disposal."

7 And that statement is pretty true that really
8 this creating a pooled fund creates an incentive for
9 private sector. And for the same reason the L.A. County
10 Task Force has opposed 2866 which is the pooled fund as
11 well. Thank you.

12 CHAIRPERSON BROWN: Thank you, Mike.

13 Our next speaker is Chuck White.

14 MR. WHITE: Thank you, Madam Chair, members of
15 the Board. I'm Chuck White with Waste Management.

16 I will echo the sentiment of others that it's
17 been quite a not always pleasurable experience, but it's
18 been really an informative and learning experience to
19 participate in the work group and hope some of the
20 discussions can in fact continue after today.

21 Rachel Oster with Norcal couldn't be here. And
22 we compared notes. While she doesn't know exactly what
23 I'm going to say, she said I think I'm going to support
24 what you are going to say with respect to some of these
25 ongoing issues. So keep that in mind as I move forward.

1 One of the things to remember is that this whole
2 thing got started with federal subtitle D in large part.
3 It's kind of laid the nationwide framework for how
4 financial assurance is done. And that is it's a minimum
5 of -- could be 30 years initially. And then that 30-year
6 period can be lengthened or shortened as necessary to
7 protect human health and the environment. In fact, most
8 other states do that. If they're ten years into a
9 postclosure care period and with 20 years remaining and
10 they think it's going to be longer than that, then they
11 make a finding it's necessary to extend the postclosure
12 care period and it's fully expected that the
13 owner/operator is going to have to provide increased
14 financial assurance at that point in time to cover those
15 increased costs.

16 And also with subtitle D, do they cover
17 corrective action, but it's only known corrective action.
18 You can't foresee a corrective action, but once a problem
19 occurs, then you have to come up with a corrective action
20 plan and also provide financial assurance.

21 The state has kind of a slightly different
22 framework. It's a minimum of 30 years. But it's
23 unclear -- but as long as the waste poses a threat to
24 public health and safety, then there's going to be
25 financial assurance beyond that. The State rules both

1 statute and regulations are kind of unclear about how
2 that's extended.

3 And that's kind of the issue that we have at hand
4 is how do you go -- and one of the things we would hope
5 the Board would not give up entirely on is taking a look
6 at the subtitle D procedure, which is used by a majority
7 of other states, that you can step in at any point in time
8 and lengthen or shorten that postclosure care period as
9 necessary to protect human health and the environment. We
10 think it works for the most part in most other states.

11 There is a problem with that approach. What
12 happens if you go in to extend the 30-year postclosure
13 care period and it turns out the owner/operator is unable
14 to meets its obligations because of lack of financial
15 resources or whatever? Those things have occurred, not
16 only in California, but throughout the rest of the
17 country.

18 And that's why we began thinking a long time ago
19 that something like a pooled fund would be a much more
20 efficient way to deal with these potential but not clearly
21 foreseeable situations. We think the number as evidenced
22 on the record nationwide, the number of inability of
23 owner/operators to meet their financial assurance
24 obligations is small. And that little orange slice that
25 Bernie and Bill showed is indicative that that's the kind

1 of the level of default that I think ICF and others really
2 indicated.

3 So it's there, but it's small. And rather than
4 oppose worst-case scenarios on every single landfill in
5 California with the incumbent increased cost and to cover
6 a potential worst-case situation at every landfill, we
7 felt it's much more efficient to develop some sort of
8 pooled fund. And of course the De Leon bill has the
9 beginning of trying to put that together in some kind of
10 credible framework.

11 So again, we think that there needs to be the
12 ability of this Board to lengthen or shorten postclosure
13 care period. There's no arguing about that. Thirty years
14 may not be enough for all landfill owners. And you have
15 to provide financial assurance. But we think a pooled
16 makes a lot of sense so you always have a revenue of funds
17 you can tap into on the relatively limited number of
18 situations for which an owner or operator, whether public
19 or private, is unable to meets its obligation can step in
20 and take care of those problems. And we would think there
21 would be a cost recovery component to that as well.

22 Now with respect to the rolling postclosure care
23 period, that isn't necessary under subtitle D because you
24 can always extend it as necessary. But the problem is
25 there may not be sufficient funding in a few cases. We

1 would prefer to see, rather than a rolling postclosure
2 care period, have an option available for further
3 discussion if something that is akin to the subtitle D
4 approach where the Board can lengthen or shorten the
5 postclosure care period based upon a need to protect human
6 health or the environment.

7 However, I must say some of the options related
8 to the rolling postclosure care period such as the
9 step-down approach or 30 by 15 step down are certainly
10 more attractive than just simply a continuous forever 30
11 years rolling out there. So we would like to have some
12 further discussions on some of the details of this option.

13 With respect to contingency, we think 2296 should
14 require the Board to look at other similar types of public
15 works projects. We think the record from our viewpoint is
16 pretty clear that about a 10 percent contingency is more
17 reasonable than a 20 percent. We're willing to have
18 ongoing discussions about that. And the issue again we
19 think it should be only related to capital expenditures
20 rather than total cost, but we're willing to discuss that
21 further.

22 Finally, my point I wanted to talk to you about
23 is this reasonably foreseeable release or reasonably
24 foreseeable corrective action. Under the federal subtitle
25 D program, the only corrective action is once it becomes

1 known there is a corrective action. You can't reasonably
2 foresee a corrective action, or if you could, you would
3 put it into the postclosure care period, because you'd
4 foresee it as being an expense you're going to have to
5 incur.

6 This has never occurred any place else except in
7 California with some regulations that have been around
8 since about 1990 with the State Water Resources Control
9 Board. And what they said is in the case that there is a
10 release to ground water, we want you to calculate what the
11 largest plume would be before your ground water monitoring
12 system was detected. Doesn't mean that plume is ever
13 going to occur. It doesn't mean that plume is really
14 foreseeable. It just means if there is a release, what's
15 the largest plume of contamination you would have. And
16 you have to have a corrective action fund set aside for
17 that potential plume.

18 The whole idea was to provide a financial
19 incentive to encourage operators to have tighter ground
20 water monitoring systems. If you had ten wells, your
21 presume would be so large. But if you had 50 wells,
22 presumably you would be able to detect it much sooner and
23 the amount of cost you'd have to put in your financial
24 assurance for corrective action would be much less.

25 So there's not really a reasonably foreseeable

1 release. It just means for purposes of calculating a
2 potential release and having some money said aside to be
3 able to respond to that possible plume that they wanted
4 you to have this corrective action.

5 It's actually pretty interesting. Before we
6 started this process, only about 30 percent of all
7 landfills have actually gone through the process and
8 actually calculated a reasonably foreseeable release under
9 existing ground water regulations. We think that's an
10 obvious first place to look is making sure all landfill
11 operators -- I hope all of ours are doing that. I think
12 they are. Are calculating reasonable foreseeable release
13 for ground.

14 My point is how do you determine what a
15 reasonably foreseeable release is, other than creating
16 some kind of pseudo assumption about what the release
17 would be -- if it was reasonably foreseeable, it would be
18 part of the postclosure care plan.

19 So we're willing to sit down and talk further on
20 this thing. And we're certainly willing to provide
21 corrective action funds at any point in time a corrective
22 action is necessary. But we're a little bit uncertain
23 about how far we need to go with this reasonably
24 foreseeable corrective action.

25 So in summary, I guess our focus and the majority

1 of our attention in working with the De Leon bill is to
2 create a pooled fund that we believe will provide some
3 assurance to this Board and to the State that funds will
4 be available to resolve issues in the unlikely event and
5 very low probability event that an owner/operator is
6 actually able to step in and do things. We think that's a
7 much more efficient use of the State's both public and
8 private resources rather than assume a worst-case scenario
9 at every single landfill in California.

10 Thank you. And I hope Rachel Oster agrees with
11 everything I said.

12 CHAIRPERSON BROWN: If she doesn't, she can speak
13 up next week.

14 Bill Magavern.

15 MR. MAGAVERN: Good afternoon. I'm Bill McGavern
16 with Sierra Club California.

17 We co-sponsored AB 2296 with Board Member Peace.
18 And we did that because we want to make sure that as these
19 closed landfills age, that we make sure that our health,
20 safety, and environment and the taxpayers of the state are
21 protected in the event that something goes wrong. And we
22 think there is a high likelihood something will go wrong.

23 As the bill has been implemented, unfortunately,
24 what we've seen in the last year or so is major questions
25 that we've raised have been virtually ignored. So at your

1 December 11th meeting when you received the ICF Kaiser
2 report, we raised a series of questions and you directed
3 that the staff answer those questions. We have not
4 actually received substantive responsive answers. So let
5 me begin bring up those questions.

6 What will had be the cost of major maintenance?
7 I still don't see in this proposal any reckoning of the
8 cost of major maintenance. It seems to have been moved
9 into the corrective action category, but not really
10 accounted for there. They seem to have been made to
11 disappear in that category.

12 What are the real risk that a landfill owner will
13 default on its obligations? Instead of the compiling of
14 bankruptcy and default records that ICF did, we suggested
15 that you look at the data from the Orphaned Mind Program
16 to give you a sense of what are the real risks. As far as
17 I know, that has not been done.

18 What's a realistic assessment of the magnitude of
19 site failures? Here, the landfill owner's own statement
20 of reasonably foreseeable corrective action costs has been
21 used. And obviously they have a conflict of interest in
22 terms of submitting the data here. And if you look at,
23 for example, what the state of Minnesota has done, they're
24 collecting \$4.37 a ton into their fund, far, far higher
25 than what's being suggested here.

1 Is the use of captive insurance-like mechanisms
2 consistent with Board policy and sound financial
3 practices? We think that's a question that still needs to
4 be looked at. And how large would a pooled fund need to
5 be to provide adequate financial assurance. Well, that's
6 a question that clearly is being grappled with here, and
7 we agree with a number of the previous speakers who have
8 made the point that the pooled fund is likely to be
9 inadequate and also creates a morale hazard.

10 We think that what you should really do is to
11 look at what would be the cost of one major failure at
12 just one big landfill. What if there is an earthquake or
13 a fire? You probably would see costs that would be in
14 excess of the entire pooled fund. And that would just be
15 from one site.

16 I note in the staff analysis it says no
17 environmental justice issues raised. And I wonder what
18 sort of inquiry went into deciding that. I think it is at
19 least worth examining whether the sites that are most
20 likely to be orphaned by their owners may well be in low
21 income communities and communities of color. So I think
22 there's a good chance there's serious environmental
23 justice issues raised here that have not been addressed.
24 We suggest that you do a real risk assessment based on an
25 actual site instead of just based on modeling.

1 In terms of the direction that is sought today,
2 which you know as I've said, I think that ignores a whole
3 range of questions. But I do want to comment that of the
4 options presented to you, the perpetual care is really the
5 only one that gives you even a chance of meeting the
6 obligations, making sure that there are not serious
7 defaults in the future and clearly there is a need for
8 non-water corrective action. That's been ignored for too
9 long. Actually, the water corrective action has been
10 ignored in many cases for too long. And increasing
11 compliance to 38 percent still, you know, to me isn't
12 something we should be cheering about. And I don't think
13 it's sufficient to say, well, let's work on that before we
14 work on non-water. You've really got to address both.

15 So we urge the Board to really give some strong
16 direction that these questions are answered and that we
17 grapple with the real full range of costs that could be
18 presented here. And I hope to come back next week and to
19 see that that's the case. Thank you very much.

20 CHAIRPERSON BROWN: Thank you can very much,
21 Bill.

22 Our next speaker is Scott Smithline.

23 MR. SMITHLINE: Good afternoon, Madam Chair,
24 Board members. I'm Scott Smithline with the environmental
25 group Californians Against Waste.

1 Californians Against Waste co-signed that letter
2 that Bill just spoke of. So I would like to align myself
3 with all of his comment he just made.

4 I think the most important thing we're doing here
5 today from our perspective is trying to accurately
6 characterize what is the risk to the state from these
7 landfills. I think the second most important thing is to
8 figure out how we're going to financially assure ourselves
9 from that risk. And I feel like we are potentially still
10 on step one.

11 We have some basic but major concerns about this
12 issue. I think there's two major things that have been
13 mentioned that go into addressing what the risk is. What
14 is the risk an incident and what is the risk a default.
15 And with respect to the risk of a default, again, not to
16 repeat things, but we don't feel like the staff's analysis
17 or ICF's analysis really fully contemplated that issue.
18 And so we urge you to look at again the Orphan Mind sites.
19 If you look at the leg. analyst's report, it calls
20 strengthening public safety of waste facilities and
21 surface mines. So they obviously felt like there was some
22 connection. They put them together in the same report.

23 The second issue is the cost of a catastrophic
24 event or a corrective action as it's called here. And the
25 staff report, you know, on page 18, I read a couple things

1 that really stood out to me, which is these non-water
2 quality corrective action costs typically would be smaller
3 than costs for corrective action for water quality. And
4 I'm not sure what the basis is for that. Like I think the
5 basis is the analysis that the staff did.

6 In the staff report it says they look back 15
7 years for reports in California. I think that's wholly
8 insufficient. I think we're looking at 15 years for
9 something that's going to be potentially out there for two
10 or 300 years. So I don't think we can use a 15-year time
11 period to figure out what is a potential corrective
12 action. I mean, if you do a simple google search, you can
13 get lots of articles about single landfill incidents
14 costing between 15, 20, 30, or 300 million dollars to
15 clean up. As Bill Magavern from Sierra Club said, if we
16 have a single event like that in the next 200 years at any
17 of our 270 landfills in the state, are we going to have
18 anywhere near enough money to pay for an event like that.
19 So I feel like we're off on that level of analysis.

20 And I would like to make one final point, which
21 is when we're talking about an analysis of an
22 extraordinary or extremely rare event, I think we need to
23 ground ourselves in the context. And the context isn't
24 looking back in the last 15 years at what happened. The
25 context is -- I mean, these words almost start to lose

1 meaning foreseeable when you're talking about 200 years.
2 What is foreseeable in 200 years? I think just about
3 anything is foreseeable in 200 years: Earthquakes,
4 floods. Things we don't know about. I think 200 years is
5 a sufficient time frame to think that the climate could be
6 significantly different here in the state due to climate
7 change.

8 So I think we need to open our minds as to what's
9 a foreseeable event and take the precautionary principle
10 here and take a much more aggressive approach to what we
11 should be funding through postclosure financial assurance.
12 Thank you.

13 CHAIRPERSON BROWN: Thank you, Scott.

14 Our last speaker is Chuck Helget.

15 MR. HELGET: Madam Chair and members of the
16 Committee, I'm testifying only because I want to make sure
17 if there is a work group appointed for this topic I'm
18 included in that work group.

19 Very quickly, Chuck Helget, Allied Waste. We
20 have supported a reasonable contingency and will continue
21 to support that. But we believe reasonable contingency
22 means something in the range of five and ten percent.

23 We also have found in having just gone through
24 the permitting process that your costs estimating process
25 and your oversight on cost estimating has significantly

1 increased over the past couple of years. Your staff has
2 added a whole lot of scrutiny. And in that process some
3 of the items that might have been considered non-water
4 related corrective actions are getting worked into our
5 cost estimates for closure and postclosure maintenance.
6 So I think that needs to be a credit to staff they are
7 increasing the scrutiny and oversight as needed.

8 Finally, pooled fund. We advocate a pooled fund.
9 And we think a pooled fund should be added more diligently
10 into staff's estimates of what these other factors that
11 they're proposing. If we have a pooled fund, what impact
12 might that have on a contingency. What impact might that
13 have on other factors that are being consider.

14 And with that, last speaker, I'm going to sit
15 down.

16 CHAIRPERSON BROWN: Okay. Questions? Comments?
17 Proposal?

18 Let me start by saying -- if we want to direct
19 questions to staff and speakers that are here, I think
20 there was a lot of information that was shared today, a
21 lot of information that needs to be taken under
22 advisement. And this is obviously has huge implications
23 in California as well as beyond our borders. So we will
24 not be making specific direction to staff at today's
25 meeting. We will be doing that on Tuesday. We won't ask

1 for a full second presentation or anybody to again
2 testify, but we will not be providing specific direction
3 on this item at today's meeting.

4 Member Peace.

5 COMMITTEE MEMBER PEACE: First, Bill Magavern and
6 the Sierra Club as sponsors of AB 2296, I'm concerned that
7 he feels like his questions haven't been answered. I'm
8 wondering if maybe your staff can work with him some more
9 to give him the answers to his questions so he feels
10 satisfied.

11 PROGRAM DIRECTOR RAUH: We'll certainly do that.

12 COMMITTEE MEMBER PEACE: And also I know one of
13 our speakers today said that proposals under consideration
14 is like not being able to use your retirement funds until
15 you're dead.

16 I mean, I guess I look at it a little bit
17 differently because landfills don't die. So what we have
18 now is like using all your retirement funds by the time
19 you're 30 when you might live to be 100. So I guess
20 that's where I'm coming from. And the fact we haven't
21 seen any postclosure maintenance costs, at least I've
22 heard of, go down over the years. They all seem to at
23 least stay fairly even or in some cases they've gone up.
24 So I think we really need to look at that and think, gosh,
25 we need to have more financial assurances past the 30

1 years. I think as soon as the 31 years hits, all the
2 problems aren't going to go away. There still needs to be
3 money there. And I know a lot of stakeholders have said
4 we'll be around and we'll have money and we'll be there.
5 But I don't know how can you really be sure.

6 So I know we're not giving direction today. But
7 from where I'm sitting, I think at least for the -- I know
8 there is going to be a lot more discussion on this. But
9 I'm just thinking at least for the larger mega open
10 landfills, I think maybe the 41 year multiplier that puts
11 that care into perpetuity makes a lot of sense.

12 When I start looking at maybe the smaller ones,
13 the closed ones already maybe something like the 30-year
14 rolling something like that makes more sense. I don't
15 know if there's a way to mix the two or one has to -- if
16 we go with the 41 year multiplier if it has to apply to
17 all the landfills or if there's a way we can do it for
18 differently for smaller, larger, open, closed.

19 And then a question on the non-water quality
20 corrective action, that makes sense to me to piggyback
21 onto the water quality ones. But what I'm concerned with
22 is you said there's only a 38 percent compliance rate
23 right now with the water quality corrective action
24 financial assurances.

25 PROGRAM DIRECTOR RAUH: If I might make a quick.

1 When we were working on this activity in December, we
2 discovered this low rate of compliance with the Water
3 Board. And immediately after that meeting, Board's
4 direction, executive directors met. And as Bill indicated
5 in his presentation, a lot of effort's underway right now
6 to increase those compliance rates. And we certainly
7 don't think 38 percent is an acceptable level, and I don't
8 believe the water boards do either. They have a lot of
9 issues on their plate. But they are working to improve
10 that compliance rate. And we will continue to push and
11 work with them to get it up to an acceptable level of
12 100 percent.

13 COMMITTEE MEMBER PEACE: So did the landfills
14 know they had to have corrective action financial
15 assurances?

16 PROGRAM DIRECTOR RAUH: It's my understanding
17 that they're aware of the program. I think it has more to
18 do with just in terms of staying current and with the
19 regional water boards indicating that this is an important
20 priority for them given all their other regulatory
21 programs.

22 COMMITTEE MEMBER PEACE: And then also in terms
23 of the pooled fund too I think that makes sense. It has
24 to at least cover the orange slice. And I know there is a
25 bill over in the Legislature right now for the pooled

1 fund, and I still think even if we go with some of these
2 other things, we're going to need some sort of a pooled
3 fund and not to I think the is Bill just limited 50
4 million dollars -- or I don't know. I think it probably
5 needs to be something that continues to grow. I don't
6 know if we have any input into that at all.

7 Those are my thoughts.

8 COMMITTEE MEMBER MULÉ: Madam Chair, I just have
9 a couple quick questions.

10 Bill, on the slides here, I just had a couple of
11 questions, because as you know, I popped in and out of a
12 number of meetings. So I just want to be sure that I
13 understand what you're proposing here.

14 Towards the ends of the slides the follow-up on
15 the LTFA study, that was something that the working groups
16 supported, correct, those recommendations?

17 DIVISION CHIEF ORR: In terms of --

18 COMMITTEE MEMBER MULÉ: The insurance and the
19 pledge of revenue, the standardizing of the form. My
20 recollection is that the working group pretty much
21 supported what you're recommending to us.

22 DIVISION CHIEF ORR: I think on the pledge of
23 revenue you've heard today a confirmation that having a
24 standardized form would be acceptable.

25 COMMITTEE MEMBER MULÉ: And then the closure PCM

1 plan updates, the update revision every five years --

2 DIVISION CHIEF ORR: Those haven't been
3 controversial during our discussion.

4 COMMITTEE MEMBER MULÉ: I think everybody pretty
5 much agreed.

6 And then on the closure certification; correct?

7 DIVISION CHIEF ORR: Correct.

8 COMMITTEE MEMBER MULÉ: So as Larry mentioned, I
9 think what we found throughout this process is that there
10 was quite a bit of agreement on the majority of issues
11 that were discussed in the past six, seven months. Thank
12 you.

13 CHAIRPERSON BROWN: Thank you.

14 Again very much for your thorough presentation,
15 all the work that's been put in, for all the work group
16 members. We'll take all of this information and the
17 extensive testimony under advisement, and we will provide
18 some direction next week to you all. And if we need to go
19 back and fine tune in July, we also have that option. And
20 if you could work with stakeholders, Sierra Club in
21 particular, and ensure that we're getting them questions
22 answered, that would be helpful.

23 COMMITTEE MEMBER CHESBRO: I think we need to
24 work out if our landfills are actually alive or dead or
25 what suspended state of animation or in purgatory.

1 CHAIRPERSON BROWN: Are you going to ask us to
2 define in statute all of those things now?

3 Thank you very much. That concludes that item.

4 We do have one more item today, which is
5 discussion and request for rulemaking direction on
6 formally noticed proposed revisions to the regulations to
7 clarify waste hauler and manifesting requirements, which
8 hopefully I'm under the assumption is going to be a very
9 brief item.

10 PROGRAM DIRECTOR RAUH: Yes. It is brief. It
11 will be non-controversial.

12 Madam Chair and Board members, the purpose of
13 this item is to present the background information for
14 discussion and request for rulemaking direction to notice
15 these proposed revisions to the waste tire hauler and
16 manifesting regulations.

17 I'm going to cut right to the chase and ask Cathy
18 Blair to complete the staff presentation on this item.

19 CHAIRPERSON BROWN: Thank you.

20 MS. BLAIR: Good afternoon. My name is Cathy
21 Blair. Chair Board and members of the Committee, my name
22 is Cathy Blair. I'm an Integrated Waste Management
23 Specialist of the Compliance, Evaluation, and Enforcement
24 Division in the Hauler Tire Compliance Section.

25 Today, I'll be presenting discussion and request

1 for rulemaking direction on formally noticing proposed
2 revisions and regulations to clarify the tire hauler
3 requirements.

4 And then just briefly a history, in 2003, the
5 Board developed the California Uniformed Waste and Used
6 Tire Manifest System pursuant to Senate Bill 876, which
7 required each tire transaction be reported on separate
8 manifest forms by waste tire haulers, waste tire
9 generators, end-use facilities, then reported on tire trip
10 logs.

11 In 2005, manifest requirements was abandoned and
12 replaced by a more efficient and easier form,
13 comprehensive trip log, CTL, which was submitted to the
14 Board by waste tire haulers on behalf of all parties in
15 the tire transactions. This form was approved by the
16 Board and adopted into regulation.

17 Currently, with the implementation of the CTL and
18 the discontinuation of the old manifest system, the
19 regulatory language needs to be clarified and condensed to
20 eliminate references to the old manifest system in order
21 to decrease confusion.

22 Additionally, language has been added to assist
23 commercial carrier industries in the registration
24 exemption process as well as assisting in the manifest
25 requirements. Regulatory relief is also being proposed

1 for specific beneficial use of waste tires. Board staff
2 conducted informal public workshops in March of 2008 for
3 discussion and comment on newly proposed regulatory
4 changes. Limited comments were made by attendees during
5 this process which suggest there is little controversy
6 associated with this proposed change.

7 Key points: Changes that staff would like to
8 bring to the Committee's attention concerning the proposed
9 regulation changes are:

10 1. Amend the common carrier exemption language
11 to include a new common carrier agricultural exemption
12 application.

13 2. Amend the penalty table to address
14 outstanding enforcement needs.

15 3. An exemption of language for beneficial use
16 of waste tires for certain uses.

17 4. Amend language pertaining to the use of the
18 temporary registration certificate.

19 5. Add requirements that all drivers under the
20 tire hauler registration must maintain a valid driver's
21 license and the vehicles must be currently registered with
22 the Department of Motor Vehicles.

23 6. Amend civil penalty language.

24 7. Lastly, to amend the definitions of the
25 languages in articles 8.5.

1 Staff recommends that the Committee direct the
2 staff to initiate the formal rulemaking process on
3 formally noticing proposed revisions to the regulations to
4 clarify the waste tire hauler requirements that the
5 regulatory changes are consistent with the current
6 requirements.

7 And that concludes my presentation for today.

8 CHAIRPERSON BROWN: Great job. Very good.

9 Anybody have any questions? Comments?

10 Okay. Then we are directing you to go out to
11 formal rulemaking process and a 45-day comment period.
12 There you go. Thank you very much.

13 (Thereupon the California Integrated Waste
14 Management Strategic Policy Development Committee
15 adjourned at 3:20 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 17th day June, 2008.

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